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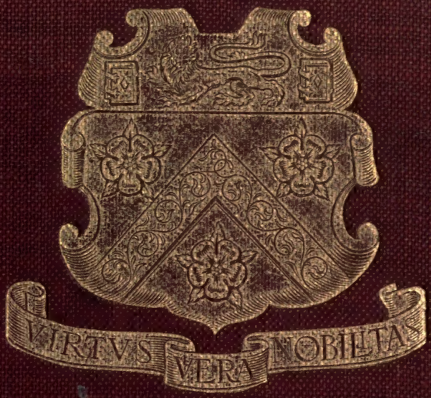

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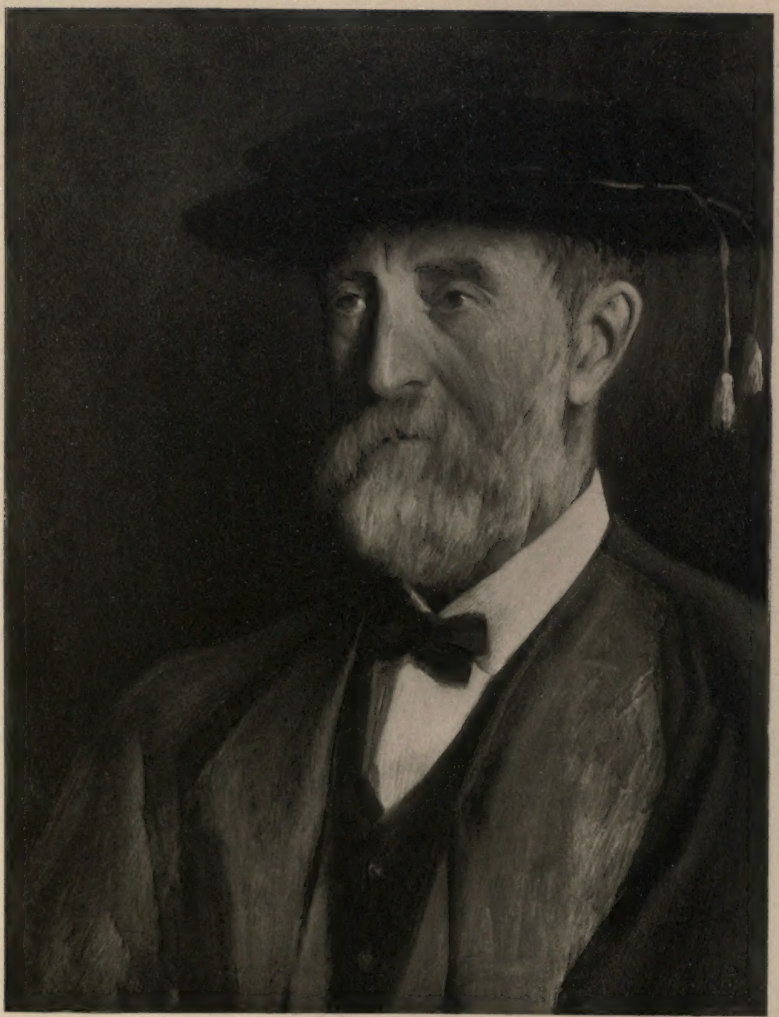
MEMORIES OF JOHN WESTLAKE



Emery Walker Ph. sc.

John Westlake

from a portrait by his wife in 1896

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MEMORIES

OF

JOHN WESTLAKE

WITH PORTRAITS

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Mrs. Westlake gratefully acknowledges the kindness of the Master and Fellows of Trinity College, Cambridge, in allowing the arms of the College to be engraved on the cover of the book.

MEMORIES
OF
JOHN WESTLAKE

I

INTRODUCTORY

THE pages that follow are not a formal biography. John Westlake's long and honoured life was not filled with events personal to himself that the political historian would chronicle. On the other hand, were a reasoned exposition of the leading ideas that formed and influenced his character to be attempted now, the writer should be one in full sympathy. But, indeed, the history of those ideas is not yet ripe for the writing. Of men of ideas, grandchildren or contemporaries are, perhaps, better biographers than the men of the next generation. Contemporaries sympathise and understand; children are apt to react; the third generation is better placed to throw into a reasonable perspective.

But, at Mrs. Westlake's suggestion and with her active co-operation, some of John Westlake's many

friends in this country and on the Continent of Europe, wishing to preserve a short record of the manner of his life and influence, have brought together either personal memories of his character and career from the points of view from which they knew him, or studies of the different aspects of his work which they are peculiarly qualified to estimate. He said himself, on the occasion of the presentation by his friends of his portrait to Trinity College, Cambridge, that 'his life was in the list of those who had joined in procuring the portrait—including, as it did, early contemporaries at Cambridge, many who had joined in welcoming him when he returned to university life in 1888, old members of his classes, and names which recorded friendships made at the Bar, in politics, at the Working Men's College, and among colleagues and students of International Law in both continents.' This little volume is an attempt to carry out the idea that underlies these words. The fact that the contributions are in two languages may serve to suggest the wide ambit of John Westlake's influence. But the book would not, perhaps, be fully intelligible without a brief summary of the main events of his life by way of introduction.

John Westlake was born on February 4, 1828, at Lostwithiel in Cornwall. His father was a wool-stapler, a business now practically extinct in the South of England. His mother—to whom, in his own words, he owed 'a very great deal'—was

Eleanora, daughter of the Rev. George Burgess, Rector of Atherington in North Devon, a clergyman of a type rare then and now scarcely possible. He kept his own hounds, but when he remarked to a parishioner that there were no Methodists at Atherington, he got for an answer: 'Why, your honour, you be as good as a Methody yourself.'

John Westlake was an only son, having an only sister, Mary Elizabeth, some fifteen months his senior; she died of cholera at Sandgate in 1854.

His and his sister's early education was mainly his mother's work: her plan was not to make her children learn anything by heart—not even hymns: 'saying' a lesson meant repeating its substance in the child's own words. At four years and seven months the boy began to learn Latin from his mother, she, in turn, learning from his father. The old 'Eton Latin Grammar' and the 'Delectus' were the vehicles of instruction. At the age of seven (1835), he began to go to the Lostwithiel Grammar School, an old school then maintained without any permanent endowment by means of an annual grant by the public-spirited corporation of the little Cornish town. At the Grammar School the boy was plunged at once into Phaedrus.

John Westlake's mother did not limit her education to imparting knowledge. She and her husband had at first brought up their child in the belief of the verbal inspiration of the Bible; but geology (a study in which John Westlake took a

lifelong interest) reached even remote Lostwithiel before boyhood was over, and Mrs. Westlake acquiesced in the view, then new, that 'inspiration' was an influence guarding the sacred writers only against spiritual error.

Until illness incapacitated him, John Westlake's father shared in his education and gave him his earliest impressions of Greek by teaching the boy to read the Iliad aloud to him in Greek every morning while he was shaving.

John Westlake never went to a boarding or 'public' school: he was a delicate boy and it was not thought wise to send him away from home; but in 1841, as Mr. Westlake senior had given up his business on account of ill-health, the family proposed to remove to Harrow in order to send John Westlake to Harrow School as a day-boarder. This proposal was never carried out: young Westlake did, in fact, spend the autumn of 1841 on a visit to the Rev. J. W. Colenso, then mathematical master at Harrow School, and afterwards the famous Bishop of Natal and Westlake's lifelong friend and client, for teaching in mathematics; but at Christmas, 1841, Colenso gave up his Mastership and returned to St. John's College, Cambridge, as a mathematical private tutor. Thereupon the Westlakes moved, in April 1842, to Cambridge instead of Harrow, and John Westlake was educated privately at Cambridge. Colenso, until he left Cambridge for a college living, was Westlake's tutor in mathematics, and Bateson,

afterwards Master of St. John's, in classics. Bateson was followed by Shilleto, the famous scholar, and Colenso by Harvey Goodwin, afterwards Bishop of Carlisle.

Westlake entered as an undergraduate at Trinity College, Cambridge, in October 1846, living at first in lodgings and then in College; he got his scholarship at Easter 1848, and took his B.A. degree in January 1850, bracketed sixth wrangler and sixth in the first class of the Classical Tripos. He was elected fellow of Trinity in October 1851, and took his M.A. degree in 1853. His father died in 1849, his mother lived on to 1866.

In 1852 John Westlake, his mother and sister, moved from Cambridge to London, where he was already keeping his terms at Lincoln's Inn. In 1854, he was called to the Bar. On October 13, 1864, he married Alice, the daughter of Mr. Thomas Hare, well remembered as the founder of the British school of proportional representation. In the autumn of 1873, he bought his Cornish home, Tregerthen, on the north coast of Cornwall about four miles west of St. Ives; in 1874, he was made Q.C. and elected a bencher of Lincoln's Inn; in 1878, his native town of Lostwithiel paid him the compliment of electing him Recorder; in 1881, he moved his London residence to the River House, Chelsea Embankment; in 1888, he was appointed Whewell Professor of International Law at Cambridge, an office which he resigned in 1908. He died on April 14, 1913, at

the River House. His ashes rest in Zennor churchyard in Cornwall, under a Celtic cross.

During his long life he received many honours from learned bodies and from governments: he was created Honorary LL.D. of the University of Edinburgh in 1877; in 1910, he was elected an honorary fellow of his old College of Trinity—an honour he prized above all others—and shortly after his resignation of his professorship in 1908, his portrait, by Mr. Charles Shannon, was hung in Trinity College Hall. In February 1908, he received the Honorary D.C.L. from the University of Oxford; he was a member of the Académie Royale of Brussels, and in November 1909 was made an honorary Docteur en Droit at the Free University of that city. He also had the Italian Order of the Iron Crown, and the Japanese Order of the Rising Sun. From 1900 to 1906, he was one of the members for the United Kingdom of the International Court of Arbitration under the Hague Convention.

In 1858 appeared the first edition of the book that made him famous; he thus describes its origin:

'I had been trained by my father to take an interest in foreign countries and affairs, and always did so; but my attention was first drawn to International Law by Christie, the eminent conveyancer of whom I was a pupil, . . . Christie suggested to me to write a book on private international law or the conflict of laws; what was wanted, as he described it, was "to make Story readable." I took

the advice but found that something more than he had expressed was required, and the result was my "Treatise on Private International Law or the Conflict of Laws, with principal reference to its practice in the English and other cognate systems of Jurisprudence, 1858." This I almost entirely rewrote for my "Treatise on Private International Law, with principal reference to its practice in England, being in lieu of a second edition of the work published in 1858," 1880. The two books were so different that I should have made no allusion to the former in the title to the second, but for the urgent instance of my publisher.' A third edition appeared in 1890; a fourth, with important developments, in 1905, and the fifth and last edition in 1912. The most important of Westlake's writings after his work on private international law is his treatise on international law proper, in two volumes, with the subtitles respectively of 'Peace' and 'War,' published in 1904 and 1907.

Westlake was not only a jurist of world-wide reputation, he also attained considerable success as a practising lawyer. As a draftsman the accuracy of his mind, his great industry, and his trained carefulness and succinctness of expression put him in the very first rank; his wide learning and his knowledge of foreign systems of law—specially French—made his 'opinion' of very great value. Hence, the main field of his professional activities was in cases involving a knowledge of international

or foreign law, and in what may be called 'commercial conveyancing': he was the originator of an early set of forms often used in the reconstruction of companies and devised by him in connection with the unhappy Agra and Masterman's Bank; and in the late sixties and in the seventies he had a considerable practice in the Privy Council. But he had not the pliancy or adaptability of the successful advocate, and, perhaps, English legal machinery has no place exactly suited for one who in Rome would have naturally been numbered with the 'prudentes,' and whose opinion would have had in his lifetime that authority which English practice reserves for decisions in contested cases.

Westlake did not confine his work in the field of international law to the publication of a treatise and the development of a practice. He realised that if international law is to play the powerful part which is its due in the future organisation of humanity, closer relations between the lawyers of different countries must be established than can result from the mere exchange of views in print. In 1862, he made the acquaintance, which ripened into a life-long friendship, of Rolin-Jaequemyns of Belgium and Asser of Holland, and in 1869 the three friends started together the 'Revue de Droit International et de Législation Comparée.' The Institute of International Law was founded in 1873, in Westlake's words, 'mainly through the energy of Rolin-Jaequemyns,' whom Westlake accompanied

to Heidelberg to confer with Bluntschli as to its foundation. Westlake and his friends were among the 'membres fondateurs' of the Institute, but his own recollection was that the idea first came from Lieber. In 1895, Westlake was president of the Institute at its Cambridge meeting.

It was his book on private international law that introduced him to practice. Soon after the appearance of the book, Mr. John Morris, of Ashurst, Morris & Co., instructed him in a case arising from the failure of a Nottingham firm that had an establishment in New York, a case which involved a visit, in 1860, to New York to examine witnesses 'on commission,' and thenceforward his professional position was assured. Of more general interest was the case heard in 1861 of the *Emperor of Austria* v. *Day and Kossuth* (reported 3 De G. F. & J. 217) in which the Austrian Government sued in our Court of Chancery to prevent Kossuth and his English printers from manufacturing and issuing paper-money in the name of the revolutionary Government of Hungary; Westlake was on the popular but unsuccessful side. A few years later, Westlake had the privilege of helping to assert before the Privy Council and the Court of Chancery the rights of his old tutor Colenso: the Judicial Committee set aside as wrongful the attempted deprivation and deposition of Colenso by the Bishop of Capetown, and the Trustees of the Colonial Bishoprics Fund were ordered by Lord Romilly

as Master of the Rolls to pay to the heroic Bishop of Natal his episcopal salary (see 3 Moore, P. C. (N. S.) 115 and L. R. 3 Eq. 1). In 1874 Westlake was engaged in the once famous Guibord case (*Brown* v. *Curé de Montreal*, L. R. 6 P. C. 157), where the right of the Roman Catholic authorities to refuse ecclesiastical burial to the body of a person said to have been subject to canonical penalties was in issue. The case is of the first importance as to the legal status of the Roman Catholic Church in Canada.

The study and practice of the law—whether international or municipal—were far from exhausting Westlake's interests. Already in 1854 (with a characteristically valorous disregard of those narrowing influences which are always at work at the Bar to prevent a young barrister from being known to have any other than professional interests), he had become one of the founders, with F. D. Maurice, of the Working Men's College, where the Christian Socialists mingled with the later Utilitarians; and at some later date, he became foreign secretary of the National Association for the Promotion of Social Science, whose annual meeting he first attended in Dublin in 1861. In 1884, he was president of the Jurisprudence Department at the Congress in Birmingham, and his connection with the Association continued until it ceased to exist. He was also up to his death an active member of the Political Economy Club. On social questions, Westlake was a convinced individualist; he found the key to social

problems in the development of individual character. He had a profound distrust of the extension of the activities of the State and the municipality, not from any lack of sympathy with the ends to be achieved, but rather from an optimistic belief not so much in the advantages likely to result from the free play of individual self-interest, as in the general right feeling of the individual man. But he detested any attempt at individual self-aggrandisement, more especially at the expense of the public, and his love of natural scenery joined with his concern for social welfare to make him an active member of the Commons Preservation and Footpaths Protection Society.

It will have been seen that in early life Westlake was in close association with Colenso: he himself writes of this association, and of his own ecclesiastical opinions, thus: 'I never approved of the first part of Colenso on the Pentateuch, though having no higher opinion than the Bishop of the historical character of the narrative, and I did my best to persuade him at least to postpone its publication till it could be accompanied by the second part. Under his, among other, influences, I at that time desired to see a wider comprehension in the Church of England than I now believe to be possible in any religious communion, established or voluntary. And I contributed an essay on "The Church in the Colonies" to a volume of "Essays on Church Policy," edited by the Rev. W. L. Clay, 1868, in which a policy of comprehension was advocated.

Having become convinced that this is impossible, I declared for disestablishment (which I refuse to distinguish from disendowment).'

A lawyer with an interest in social questions as strong as was Westlake's is necessarily drawn into politics—necessarily, because a true servant of the law will neither undervalue its power nor leave to others the task of its amendment. In 1885, he entered the House of Commons as Liberal Member for the Romford Division of Essex, but he voted and spoke against the first Home Rule Bill and lost his seat to his former Tory opponent in a three-cornered contest on the dissolution in July 1886. In 1892, he stood as a Liberal Unionist for the Mid or St. Austell Division of Cornwall—upon the understanding that he was not to vote for disestablishment if proposed—and was defeated. In truth, he was not politically in a sufficiently strong position to impose himself on party managers, nor sufficiently adaptable to become an ordinary subordinate member of a party. It may be doubted whether his life lost either interest or usefulness even in the sphere of politics by his electoral defeats. He combined with his interest in social questions a close study and knowledge of foreign affairs, for which he would have had little scope in the House of Commons, but which he could exercise in his position as an international lawyer with more freedom and at least equal effect.

Other contributors to this volume will give some account of Westlake as a jurist, as a politician, as a

friend of oppressed nationalities, as a social worker, and in other capacities, but it may be not out of place here to illustrate his character by briefly mentioning his devotion to the cause of the enfranchisement of women. Throughout his life he held the view that the exclusion of woman from fields of activity where she is no less generally competent to do good work than is man, is a legacy from past conditions of society for which there is no justification. And he worked steadily for the propagation and realisation of his view, confirmed and strengthened by the example of Mrs. Westlake's fruitful activities as a member of the School Board for London.

He held no official position in any of the societies for women's suffrage, but he was always ready to speak for the women's cause, and to help it with his legal knowledge or financial aid, and he gave to the women's movement the invaluable moral support of a sane judgment and balanced mind. The methods of other supporters of the cause never affected in the least his unwavering support. If the public weigh the soundness of a cause by the acts and character of its supporters, Westlake's name should be laid in the balance as one not inconsiderable element in arriving at a just conclusion.

Throughout his life, he was an eager and, in the technical sense, a 'good' traveller, having that rigorous simplicity of habit which is the main condition of 'good' travelling; but with the exception of two visits to America, an expedition to the Asiatic side of the Dardanelles, and a journey in

Algeria and Tunis, he confined himself to Europe. His European journeys included a visit to Dalmatia and a long stay at Athens and in the Peloponnese, where his sympathies with the Greek and Balkan peoples generally were confirmed. He rarely missed the annual meetings of the Institute of International Law. His profound knowledge of history, and his lively interest both in architecture and geology, stimulated and were in turn increased by his travels.

A list of Westlake's writings will be found in an appendix: the list includes much that, written by another man, would have been dashed off as journalism, but whatever the occasion, he never either wrote or spoke with haste or superficiality; whatever he wrote bears the stamp of an intellect accurate and profound. In all that he wrote he put forward his full powers. He was almost over-conscientious in any mental work, however trivial. Carelessness in thought or looseness in expression were abhorrent to his mind. He never spared himself.

To this skeleton of dates and facts a few personal impressions may be added. John Westlake must have struck all his friends with his passionate and at the same time reasonable enthusiasm of reason. His mind was up to the very last keen, balanced, in the best sense judicial. A casual acquaintance might have thought him far away from any form of enthusiasm. But, in fact, his intellect was at the service of a personality devoted romantically to high ends, and sympathetic to every deeper call of humanity. Cultivating himself a great clarity of

speech, he was yet fully responsive to the music of eloquent and stately language. The mysterious names of the headlands of his Cornish coast—names some of them pre-Celtic in origin—were, as he said himself, 'music to his ears'; and to hear him quote the famous

> Where the great vision of the guarded mount
> Looks toward Namancos and Bayona's hold

was to understand how the spirit of a great poet will speak directly across the centuries at the call of a congenial mind.

Perhaps one of the happiest moments of his later years was the evening when the news reached London of the finding of the Court of Inquiry as to the affair of the North Sea fishing-boats and the Russian Baltic Fleet. When he heard the news, his face and all his figure was alive with keen personal enjoyment. He rejoiced for his country; and he rejoiced, too, for the study to which he had given his life. An international tribunal had settled a grave question, of which the issues were war or peace; International Law had made another step forward in what may yet prove to be a rapid conquest of a civilised world.

Westlake was a believer in human progress. He held unswervingly that the general conditions of human life were improving. He was absolutely free, in his old age, from the common and pardonable tendency to believe that the world had been better in the prime of his own life. He asked for light and welcomed it. He had a reverent faith in reason. His powerful intellect never led him to an impatient

or contemptuous estimate of mankind. He erred rather by crediting all the world with an anxious desire to act reasonably. To differ from him on any serious subject was an exercise both in humility and self-knowledge; his good faith shamed any baser motive; his powerful reason revealed unsuspected weakness on the opposing side and new strength on his own. One might differ from him in his premises, in his estimate of a character or a situation, but, the basis of his argument once accepted, assent was compelled to his conclusions. A man of so high a courtesy dignified all the relations of life. In his mouth, and in his presence, a lawyer was a servant of justice, a partisan of practical reason.

As all liberal-minded men, he hated oppression: as all international lawyers, he was a friend of peace. But he did not hold that the cessation of war was near at hand, and he did not support the proposal for exempting private property from capture by sea, partly from the belief that the proposal would unduly weaken his country's power of offence. Perhaps the most signal service that he ever rendered to the human race was his happy suggestion of a combination of mediative and judicial arbitration in the Venezuelan difficulty with the United States of America: a suggestion that averted a fratricidal strife in which communities less happily advised might have plunged. For that service two nations will always be his debtors.

J. Fischer Williams.

II

HIS BOOK AND HIS CHARACTER

WESTLAKE's death takes from the English Bar a lawyer of high distinction. It deprives England of a most public-spirited and patriotic citizen. It means to many of us the loss of one of the kindest and most trustworthy of friends. I make no effort to give even a sketch of his career; my aim is first to give an estimate of Westlake's 'Private International Law,' the book on which his fame as a juridical writer must ultimately depend, and next to direct attention towards one or two aspects of a noble character which, from the circumstances of my life, were specially brought to my notice.

Consider first the character and excellence of his book.

The first edition of Westlake's 'Private International Law' appeared in 1858.[1] The fifth and

[1] It was, when first published, entitled *A Treatise on Private International Law, or the Conflict of Laws, with principal reference to its practice in the English and other cognate systems of Jurisprudence.* This title itself, which is somewhat changed in later editions, is instructive. The words 'or the Conflict of Laws' show to a thoughtful reader the reverence with which Story's great work was still rightly regarded.

latest edition thereof appeared in 1912. The book is a monumental work. It is the record of the immense development in England, during little more than half a century, of a most important branch of law; this development is the more characteristic of England because it is almost wholly the outcome of judicial legislation. Mr. Westlake's treatise is also monumental because it is the work of lifelong industry and of well directed legal genius.

To a reader before whose eyes lie open the first and the last editions of Westlake's 'Private International Law,' two questions naturally suggest themselves: First, what is the sort of change which has taken place in English rules as to the conflict of laws during the last fifty-four years? Secondly, how far has our author influenced the progressive development of the body of law as to which he is undoubtedly among Englishmen the highest authority?

The change which during half a century has been worked in the law of England by judicial legislation, aided by a few statutory enactments, may be summed up in two sentences: 'Private International Law,' as recognised by English Courts, was in 1858 incomplete and chaotic. It now, in 1914, approaches to something like completeness, and may be summarised under leading principles. Anyone who re-reads Westlake's first edition feels astounded at the confusion and the fragmentary character of the rules then enforced by English

Courts with regard to the conflict of laws. Our judges at that date practically recognised no authoritative treatise except Story's 'Conflict of Laws,' published in 1834. The great merits of Story must be acknowledged by everyone who can recognise the strength and solidity of good legal thinking. Whether his treatise gains much from miscellaneous quotations from foreign writers who possessed in their day considerable reputation, may be open to question. It is not at all clear that, nowadays, Story's citations from Huber, from Paul Voet, and other like authorities, give any additional weight to his own statements of the rules as to the conflict of laws maintained in England and in the United States. Still, when he wrote, it was necessary to cite authorities whose dicta, not always thoroughly understood, were respectfully received by British and American Courts. Story's language often lacked precision. He, for instance, now and again uses the expression 'personal property' when he really means 'movable property'; he and the judges whom he influenced gave, whether consciously or not, an ambiguous meaning to the expression *lex loci contractus*, and probably gave too wide a sense to the rule that all matters of procedure should be governed by the *lex fori*. Still, Story was essentially a man of powerful common sense and extensive legal learning, and though his language might lack precision, it was always intelligible to anyone who wished to understand it. It must,

moreover, be remembered that, till Westlake wrote, there existed no other modern writer on the conflict of laws who was really well known to English judges. The true difficulty, however, with which English writers and English Courts had in 1858 to struggle, was that many questions of private international law which required an answer had received no reply either from statute law or judge-made law. It is astonishing to reflect upon the number of matters, now definitely decided, as to which it was fifty-four years ago impossible to give a dogmatic and distinct opinion. The Wills Act, 1861 (Lord Kingsdown's Act), had not passed into law. There are a number of questions which, owing to that Act or the interpretation thereof, are in strictness questions no longer. In 1858 it might fairly again be said that England possessed nothing like a code as to the jurisdiction of English Courts over defendants residing abroad. The Rules of Supreme Court, Ord. XI, rr. 1 and 2, have gone far to codify the principles according to which English Courts claim jurisdiction over such defendants. The law of domicil is for the most part practically contained in *Bell* v. *Kennedy* (1868) L. R. 1 Sc. App. 307; *Udny* v. *Udny* (1869) L. R. 1 Sc. App. 441; these cases with *Moorhouse* v. *Lord* (1863) 10 H. L. C. 272, and the cases commenting thereon, such as *Huntly* v. *Gaskell* [1906] A. C. 56, contain something like the whole of the principles which make up that branch of private international law. But all these

cases are later than the publication of Westlake's book. You could hardly, in fact, turn in 1858 to any question of considerable importance for the determination of which you could cite decisive authority. Whether, for example, the possibility of *legitimatio per subsequens matrimonium* depended on the law of the domicil of the father at the time of a child's birth, or on the law of the father's domicil at the time of the marriage, or, as some authors suggested, on the law of the country where the child was born, might, in 1858 and for some time after, have been a subject of fair debate. In other words, *Vaucher* v. *The Solicitor to the Treasury* (1888) 40 Ch. Div. 216, had not yet been decided. It was fairly arguable, strange though it may appear, that a child's legitimation might depend on the law of the country where his mother was domiciled at the time of the child's birth. Indeed, in 1858, questions of private international law were liable to be perplexed by the superstition that the inaccurate eloquence or loquacity of Lord Brougham was the sound exposition of uncertain legal principles. In this state of matters there might well be doubts as to the law governing matrimonial capacity, or the law governing divorce jurisdiction. It is impossible to assert that on the first point the law is even now quite clear. *Sottomayor* v. *De Barros*, No. 1 (1877) 3 P. Div. 1, and *Sottomayor* v. *De Barros*, No. 2 (1879) 5 P. D. 94, taken together with *Chetti* v. *Chetti* [1909] P. 67, have done

something to elucidate, but something also to darken, questions as to matrimonial capacity. In 1858 the whole theory of divorce jurisdiction was, naturally enough in England (where divorce under any circumstances was not legalised until the Divorce Act of 1857), in a condition of immense confusion. It was open to the gravest doubt whether a foreign Court had any jurisdiction to dissolve an English marriage, and it could further be doubted whether an 'English marriage' meant 'a marriage which was celebrated in England' or 'a marriage made between parties of whom the husband was domiciled in England.' So, again, it might have been, in 1858 and even later, with almost equal plausibility, maintained that the validity of the sale of a movable depended upon the law of the country where the movable was situate when the sale took place (*lex situs*), or that it depended upon the law of the country where the owner of the movable was domiciled (*lex domicilii*). The point is not even now so clearly decided as it ought to be. Still, the tendency of English Courts in 1914 clearly is to hold that the assignment of an individual movable which gives a good title thereto according to the law of the country where the movable is situate at the time of the assignment is valid. (See *Castrique* v. *Imrie* (1870) L. R. 1 H. L. 414, 429, and *Embiricos* v. *Anglo-Austrian Bank* [1905] 1 K. B. 677, 683 C. A.). One last example of the uncertainty of English private international law in 1858 is to be found in the lack

then of any decisive decision of the extent to which fraud could be taken to invalidate in England the judgment of a Court of competent jurisdiction. It is now determined that a foreign judgment, at any rate *in personam*, is invalid and cannot be enforced in England if it is obtained by the proved fraud of the party in whose favour the judgment was given (see *Abouloff* v. *Oppenheimer* (1882) 10 Q. B. Div. 295; *Vadala* v. *Lawes* (1890) 25 Q. B. Div. 310). A point on which eminent judges were divided as late as 1890 could assuredly be treated as open to dispute when Mr. Westlake first published his celebrated treatise. Add to this the reflection that, where the points definitely decided by the Courts were few, judges and text writers were tempted to give an exaggerated importance to a few so-called established principles. This truth is illustrated by the undue prominence given to the case of *Birtwhistle* v. *Vardill*. This decision that a man could not 'inherit' English 'realty,' if his legitimacy depended upon legitimation by the subsequent marriage of his parents, certainly gave currency to the impression that succession to every kind of land in England was regulated in strictness by the *lex situs*. Later judgments, however, have in every direction cut down the effect of *Birtwhistle* v. *Vardill*. That case applies only to inheritance in the strict sense of that term, and only to freehold property. The confused condition of English private international law in 1858 gave a great

opportunity to a learned and subtle lawyer who wished to reduce English rules as to the conflict of laws to something like a body of principles.

Of this opportunity Westlake availed himself. He was able to do so not only from the circumstances of the time, but also from the turn of his own genius and studies.

His position among the lawyers of England was pre-eminently noteworthy. At the beginning of his career as a barrister it might properly have been called 'singular,' in the strictest sense of that much misused word. He stood alone among his contemporaries, in that in him were found united two characteristics, which, towards the middle of the nineteenth century, were rarely possessed in combination by any English barrister. He was a thoroughly trained and competent equity lawyer, he had acquired in the chambers of Christie—the most eminent conveyancer of his day—a complete command of the whole art or science of conveyancing; he was at the same time endowed with the gifts, and had acquired the knowledge which, in Germany or in France, would have made him eminent as a professor. He must when still a young man have studied Roman law and made himself acquainted with the writings of foreign jurists, and notably of Savigny. He was, whilst immersed in the technicalities of conveyancing, and thus of our real property law, already interested in the problems of jurisprudence and in the solutions thereof by

foreign professors. It is this combination of a thorough knowledge of English law with careful study of the works produced by the great Continental teachers of law which gives to Westlake's book on Private International Law its peculiar originality. It has long been the standard work on its own subject; it assuredly will be Westlake's title to fame as one of the most distinguished among English juridical writers. The originality of the book will never be appreciated as it deserves by any reader who does not bear in mind the circumstances in which it was produced. Treatises on private international law, or the conflict of laws, have now become common. When, in 1858, Westlake published his celebrated treatise no work on the conflict of laws was practically known in England except Story's most justly renowned Commentaries. It is hardly possible to overrate the intellectual originality and boldness of a youthful writer who, just leaving the chambers of Christie, took up and worked out the idea of throwing new light on a subject of which Story's work was then supposed in England to be the sole and perfectly adequate exposition. True it is that Story's 'Conflict of Laws' was already somewhat out of date. It is also true, as Westlake himself has left on record, that Christie suggested to Westlake the work which he willingly undertook, and that before 1858 private international law had been explored anew by German jurists, and many of its darkest recesses had been illuminated by the genius of Savigny.

But a young man wishing to rise at the English Bar needs high intellectual courage before he ventures the attempt to guide his readers through a province of law already occupied by a writer of Story's high authority. Such an adventurer needs also insight into the means by which he can accomplish the object at which he aims. Westlake lacked neither this courage nor this insight. He fully grasped the nature of the task before him. His aim was to induce English Courts to consider new solutions by Continental thinkers, and especially by Savigny, of the problems both old and new presented by the conflict of laws. This effort would, as he knew, necessarily be futile unless, while bringing Savigny's principles to the knowledge of English lawyers, he could also convince English judges that the principles accepted by Continental thinkers could be applied to the solution of our difficulties without contravening the general spirit of English law, and without directly contradicting the doctrines—happily not very numerous—which under the influence of Story had already by force of precedent obtained a position of authority unassailable except by parliamentary legislation. In every line of the first edition of Westlake's 'Private International Law' you can trace the influence of Savigny; but he never forgot that he was an English lawyer writing for the instruction of English barristers and English Courts, and therefore bound to accept the fundamental and established principles of the law of England. Not

one man in a thousand could have succeeded in this attempt to enlarge the law of England by propagating throughout one important part thereof new Continental ideas. Westlake succeeded because he was, unlike most of the Benthamite reformers, a thoroughly trained English lawyer who almost instinctively understood the nature and the expansiveness of judge-made law, and who throughout his life was a practising and successful barrister, and thus kept up and increased his knowledge of English law as it daily works and grows. This combination in Westlake of an English real property lawyer and of a jurist well versed in the speculations of foreign professors is then one main source of his deserved success in the introduction of new principles into the rules of private international law as now administered by English tribunals. It is also the cause of his one defect as a writer—namely, a certain stiffness and obscurity of expression. In the edition of 1858 one occasionally finds terms which need explanation by some adept in the literature of German law. In the later editions of the book this adoption of German expressions is far less noticeable, whilst Westlake's exhaustive mastery of all the English cases which bear upon his subject becomes more and more manifest. But even to the last he writes as a teacher addressing rather a body of lawyers than a body of students by no means at home in all the mysteries of the law of England. The soundness, however, of Westlake's method is

proved by its results. He became long before his death in reality the instructor of English judges.

What was the influence exercised by our author's writings on private international law ?

Professorial opinion has in the English Courts no influence whatever. This fact, though it sounds strange to a foreigner, needs no explanation to anyone who remembers that, to speak plainly, in 1858 professorial teaching of law was practically non-existent and that for a long period the most industrious of English students had studied law only in the chambers of barristers or pleaders. But the authority of eminent writers on different branches of law has always had greater weight with English judges than sometimes the Courts would willingly admit. No judge fit for his office likes to decide a law case without reference to some principle, and the grounds for a legal rule are most easily discoverable in the works of an ingenious and learned writer, such as was, in his day, Serjeant Stephen, or such as was, at the middle of last century, Story. Westlake soon became an author whose dicta, though they could not during his lifetime be cited as technically authoritative, aroused the attention and received the consideration of our tribunals. The results of his labours and of the constantly improved editions of his 'Private International Law' might probably be traced through the whole of the topic with which his book deals. I do not attempt more than to point out a few notable instances in which he has

certainly aided the development of legal knowledge. Thus it is quite manifest that Westlake introduced to the knowledge of English lawyers the conclusions which Savigny had made known in the eighth volume of his 'System,' published between 1840 and 1849. This achievement was no small one. It gradually made English lawyers aware of some of the ideas of the writer who then was the best known of European jurists, and be it noted that Westlake during the whole period of what we may call his literary life has systematically laboured at making Continental ideas known to any English reader interested in legal theory. He again in the very first words of his first edition provided what Story never really attempts, a definition or description of the subject with which he proposed to deal. 'Private International Law,' he writes, 'is that department of private jurisprudence which determines before the Courts of what nation each suit should be brought and by the law of what nation it should be decided.' The more a lawyer reflects upon this definition the more clearly he perceives that though perhaps any man might suggest some slight change in the words of the sentence quoted, yet they really and substantially give adequate expression to that view of private international law which has been adopted by almost every Court and every lawyer throughout England and the United States. When I remember that a very vigorous writer on legal theory, whose fame as a controversialist has rather obscured his

deserved reputation as a lawyer, has stated somewhere in his multifarious writings that private international law, or the rules as to the conflict of laws, are in reality rules for determining the law applicable to causes of action arising beyond the jurisdiction of the Courts of a particular country, e.g. England, one can see that even after 1858 it was desirable that any man who wrote upon the conflict of laws should be guided by some more precise description of his subject. Westlake, further, was often compelled, as was Story before him, to lay down rules for cases as to which no definite decision of any English Court could be found. Thus he has to intimate that in reference to immovables the capacity to transfer them may probably depend upon the *lex situs*.[1] But his language in 1858 was necessarily vague. Oddly enough it may be doubted whether there was any distinct English judicial authority on the point before the *Bank of Africa* v. *Cohen* [1900] 2 Ch. 129, C. A. But the conscientious attempt on our author's part to discuss and criticise the principles on which decided cases may be grounded has assuredly more or less directly led to judicial decisions, establishing fundamental doctrines. It can hardly, for instance, be disputed that Westlake's chapter on Domicil to a great extent anticipated a great deal of law which is now embodied in the most authoritative of all judgments, namely the judgments of the House of Lords. He must receive

[1] Westlake, first edition, pp. 77, 78.

credit further for doing everything that argument could do to establish the view, which when he wrote was accepted by Savigny, that though succession to movables should be governed by the law of, e.g., a deceased person's domicil, yet that the assignment of a movable when looked upon as a single thing and not as part of a person's whole movable wealth should be governed by the *lex situs* or the law of the country where the movable was situate. Our author, be it remarked, defended this position at a date when the vague language of English judges, and of Story himself, suggests that all rights over movables should be governed by the *lex domicilii* of the owner,[1] and there is no doubt that decisions given long after the publication of the first edition of Westlake's work on the whole support his doctrine.[2] Westlake, further, to a considerable extent anticipated the idea now upheld by many foreign jurists that at any rate in the case of marriage the rights of the husband and wife both to movable and immovable property should in the absence of any settlement be governed by the law of the matrimonial domicil, i.e. by the law which they intended, or may be presumed to have intended at the time of the marriage, to govern their respective property rights. This doctrine, too, which in itself seems to be sound, has been sanctioned, as regards

[1] See Westlake, first edition, ch. 8.

[2] Compare, as to the actual condition of English law on this topic, Dicey, *Conflict of Laws*, second edition, pp. 519–528.

movables, by the House of Lords in the case of *De Nicols* v. *Curlier* [1900] A. C. 21, and applied to English immovables by Kekewich J. in *De Nicols* v. *Curlier* [1900] 2 Ch. 410.

The latter case might certainly have been based on a narrower principle than that adopted by the judge who decided it. Still one may own to a regret that Westlake has hesitated in the peculiar circumstances of the *De Nicols* cases to give effect to his own convictions and still teaches that 'the effect of marriage on English land, in the absence of express contract, is governed by the law of England without reference either to the domicil of the parties or to the place of celebration of the marriage.'[1] It is very difficult to suppose that the doctrine of the House of Lords, though it does not include English land, will not, when the occasion arises, be applied to land as well as to movable property in England. A very good example of Westlake's beneficial influence on the development of English law is afforded by his treatment of foreign judgments when they are judgments *in personam*. In his first edition, he already explains a puzzle which has perplexed many capable lawyers—namely, how to make the law as to foreign judgments *in personam* consistent with the doctrine laid down in judgments of authority that a foreign judgment is in England considered as merely prima facie evidence of a promise by the party against whom it is rendered

[1] Westlake, fifth edition, s. 35, p. 77.

to pay the amount of a debt. The explanation is that this promise is a fiction and was resorted to only to bring an action on a foreign judgment within the English forms of action, but that this fiction must not be pressed so far as to obscure the fact that our Courts in many cases hold a defendant in an action on a foreign judgment really to be bound by the judgment itself; this puzzle being got rid of, the law as to foreign judgments was from the time when Westlake's first edition appeared, freed from a great deal of its obscurity. Meanwhile, as in regard to foreign judgments, so in other instances where Westlake had occasion to deal with difficult points of private international law, his influence has been as salutary as it was considerable. His work deserves the respect and gratitude of all English lawyers, and especially of those English lawyers—a very limited and I am afraid uninfluential class—whom he has induced to follow in his footsteps and attempt, with less success than himself, to answer difficult and still unsolved problems of private international law.

In regard then to the influence of Westlake's book on the development of private international law in England, we reach the following result. In 1858, few were the questions as to the conflict of laws which had received a final answer in the English Law Courts. Before Westlake's death, and greatly owing to the influence exerted by his book, problem after problem of private international law had

received in England a decisive solution. The growth of his authority on all matters connected with the conflict of laws receives a curious illustration from the dates of the different editions of his 'Private International Law.' The first edition dates from 1858, when he had only been for four years called to the Bar. His second edition, in which he really rewrote the whole work, appeared in 1880, and was succeeded by three more editions appearing respectively in 1890, 1905, and 1912. The meaning of these dates is not hard to interpret. It took twenty-two years for an author, not supported by judicial position, to impress his legal doctrines upon English tribunals. But when once the impression had been made, his teaching began to rule as it still rules the decisions of our Courts. I do not wish to encumber an estimate of Westlake's 'Private International Law' with too many legal technicalities. My desire is to insist upon two facts alone. The first is that juridical writers may under favourable circumstances exert in England an influence over the action of our Courts as great as is avowedly exerted over foreign tribunals and foreign legislation by the authority of renowned professors. The second is that in England Westlake holds a high place among such authoritative jurists because he was a thoroughly trained and experienced English lawyer, and also possessed knowledge, rare in England, of foreign law and of the doctrines propounded by foreign jurists. He used to tell, with

the dry humour which he sometimes exhibited, how once upon a time when some theory of Westlake's was mentioned by some Scottish lawyer, arguing I suppose before the Court of Session, a Judge asked, 'When did Westlake flourish?' Such an inquiry must surely have belonged to the earlier part of my friend's career; long before the close of the nineteenth century every judge of the Superior Courts in every division of the United Kingdom must have known both that Westlake was actually flourishing and that any words of his on the conflict of laws must in every British Court be received with profound attention.

Turn now from Westlake's treatise to some of the traits of his noble character on which I can speak from personal knowledge. He was, indeed, the instructor of judges; but he was at no time of his life a mere lawyer. He inherited the noblest of the traditions handed down by the Benthamites of 1832 to their successors. He had thoroughly imbibed the idea that no man, and least of all a lawyer whose very profession bound him to be the servant of humanity and of justice, was at liberty to stand apart from any movement which promised benefit to his country or to mankind. The disinterested service of the public became with such a man part of his private life, and of his own personal concerns. An example will best show my meaning. In 1854, when a young man of twenty-six, he was called to the Bar. In the very same

year he joined Maurice and his disciples in the foundation of the Working Men's College. The extent of the sacrifice made by youthful barristers, such as were Westlake, Litchfield, or Tom Hughes, when they joined in founding a College which should offer a liberal education to working men, can with difficulty be understood in 1914 by youths who have recently taken their degrees at Oxford or at Cambridge. A barrister ambitious of success at the Bar will always risk the success of his career if he takes a step which appears to interrupt his legal studies. But in 1854, if the interruption arose from the eccentric desire to educate the artisans of London, he would certainly have been charged with oddity; and if he had enrolled himself in any way among the body of Christian Socialists, he would have been lucky if he were not put down by his acquaintance as a fool or a fanatic. In 1854, few were the persons who believed in the possibility of bestowing upon wage-earners an education which in its spirit and in its objects resembled the training given to the sons of the well-to-do middle classes at our old universities. In 1854 the follies, the bloodshed, and the failures of 1848—that year of revolutions—were only too well remembered by so-called educated Englishmen. The English public honestly, though absurdly enough, believed that Maurice, Kingsley, and every one of their allies, were revolutionists bent on undermining the existing order of society, and were infected with the

Socialism of Louis Blanc, which had been made hateful to sensible Englishmen by the revolutionary conflict of June 1848, and had also been made ridiculous by the follies and the breakdown of the national workshops at Paris. A barrister who joined the founders of the Working Men's College was in 1854 deemed by his seniors pretty much what we now call a crank. He was assuredly not the man to acquire the confidence and to receive the briefs of respectable solicitors. Then, too, the working men, for whose sake a youthful barrister was asked in 1854 to make a considerable sacrifice, were for the most part without votes, and had no means of repaying in the world of politics a benefactor, who for the sake of artisans had imperilled his success at the Bar. No one among the founders of the Working Men's College could have supposed that a connection with Christian Socialists would be to him professionally anything but a disadvantage. But Westlake in 1854, as ever, pursued with the utmost calmness and simplicity the path dictated to him by public spirit. He was enrolled among the founders of the Working Men's College. At a time when hard pressed by legal study and by the composition of his 'Private International Law,' he taught mathematics at the College. He was to his life's end the firm friend of the College and took part in its government. Within a few months of his death, he delivered there an address on the study of history. He survived all but one

of the founders of the College. It is worth while to dwell with emphasis on this part of his career because it is one of the first of the many examples he gave of his undying zeal for the public welfare. No movement which he deemed to be the cause of justice or of humanity ever appealed to him for aid in vain. He stood manfully by his teacher and old friend, Colenso. He was the advocate of proportional representation, as also of votes for women. He took a leading part together with Sir Frederick Pollock in a protest made by jurists of several nations on behalf of the constitutional rights of Finland. But his ardour in the support of what he held to be justice was never the violence of a man whose reason was carried away by his feeling. At last, in 1885, he obtained a seat in the House of Commons. Every critic who had an eye for honesty and energy must have felt that Westlake was the kind of man who is most needed in the House of Commons and who most rarely gets a seat there. He was a man of ability. He was a man of courage. He was a man of perfect disinterestedness. He laid no claim to be an orator or a ready speaker, but his moral judgment, expressed with calmness, would inevitably command attention in any assembly of English gentlemen. In the election of 1886 he lost his seat. Short, however, as was his career as an M.P. it was long enough to enable him to take no small part in the termination of one of the most impressive of Parlia-

mentary crises. He joined in the decisive rejection of the Gladstonian Home Rule Bill of 1886. This blow broke up for ever the old Liberal party. The moral effect of this rejection of Gladstone's policy was immensely increased by the character of the men of whom Westlake was a typical and noble representative. He was a staunch Liberal. He was intellectually as well as morally a politician of the rarest independence. His fixed habit of seeking in the intellectual world wholly for truth, and of pursuing in public as in private life nothing but the interest of his country and of mankind, had its reward. It made it possible for him, while following the guidance of the most respected of Parliamentary Liberals and Parliamentary Conservatives, to contribute heavily towards the transformation of mere dissent from Mr. Gladstone's policy into a solemn protest against the violation of principles of broad expediency which the Unionists of 1886, whether rightly or not, identified with the demands of justice. To assert, as one may do with absolute confidence, that Westlake was absolutely incapable of political wrong-doing, is a very different thing from saying, what is certainly not true of any statesman whatever, that he never committed errors of judgment. It has sometimes struck me that in his life, as also in his writings, his own virtues made it difficult for him to allow sufficiently for the stupidity and the indolence of mankind. In forming his opinion of persons, even

though they were persons with whom he did not agree, he scarcely, I have fancied, realised how much the influence of self-interest, in the ordinary sense of that term, or of intellectual dishonesty, by which I mean the desire not to face truth itself when unpleasant, tells upon most men's opinions. This remark certainly I think held good as to his judgment of his friends. A noble simplicity led him to believe that they were as disinterested and as honest as himself. The opinion which Westlake had once deliberately formed in favour either of men or of causes, he was unwilling and slow to change. This steadfastness was in itself a high virtue. He knew nothing of the hesitation and half-heartedness which is often the bane of modern public life. He was utterly free, for instance, from the weakness of some Unionists who were always hankering for some compromise with Home Rule. He remained to the day of his death the Unionist of 1886. With him a conviction based on calm reasoning could be altered only by reasons of greater force. Many indeed were the men the firmness of whose conduct was increased by their unhesitating confidence in the honesty, the humanity, and the moral wisdom of Westlake's unbiased judgment.

No notice of Westlake's career could possibly terminate, on my part at least, without my coming round to his fidelity and his kindliness in everything pertaining to friendship. It is difficult in such a matter not to say either too little or too much.

Silence is perhaps the course of safety. But something must be risked. Each man had better speak of that which has fallen within his own immediate knowledge. He may be well convinced that the faithfulness and the kind-heartedness whereof he has had experience have been felt gratefully by others who have shared the happiness of being numbered among Westlake's friends. At a very early period of my intimacy with Westlake the fidelity of his protest against unfairness towards others, even on the part of a friend, deeply impressed me. It had the sort of charm, and occasionally the sort of unconscious humour, which everyone must have experienced in the faithful dealing of the best among the Friends, if indeed he has had the happy privilege of being acquainted with some of the many admirable representatives of Quakerism. But if this fidelity was sometimes a little startling, it was blended in Westlake, as with the Friends, with faithful support. It was to many of us a source of unspeakable strength to know that in any course of conduct which he deemed right we could count upon his unwavering and unhesitating support. Then, too, he had the kindliness of heart never lacking among the members of the Society of Friends. It was my good fortune in comparatively early life to read, long before I knew Westlake, his 'Private International Law.' This almost accidental circumstance led me to become involved in the whole subject of the conflict of laws, and at last to produce a treatise on the subject

whereof he was the acknowledged master. The most one could naturally expect was that a man generous himself would not object to the intrusion of a stranger into his own province. As a matter of fact, Westlake went much further. He gave me all the aid and help in the preparation of my book which he possibly could. I never saw, and I am sure there did not exist, the least feeling on his part of dislike to encourage my attempt to follow his footsteps even when, as it occasionally did, it led to dissent from doctrines propounded by himself. The plain truth is that much as Westlake achieved in his life—and he achieved far more than most men—the man was greater than the work which he so well performed; he was in his character, as in his work, all of a piece. He attained to a kind of noble simplicity, or simple nobleness. The causes of this moral greatness are well summed up in the words of one [1] who knew him well as a colleague in the International Arbitration Court at the Hague: 'C'était un de ces hommes rares qui cherchent la vérité sans arrière-pensée et qui cultivent la science pour en faire profiter le genre humain.' [1]

A. V. Dicey.

[1] The late T. M. C. Asser, of Holland, one of the co-founders with Westlake of the *Revue de Droit International et de Législation Comparée.*

III

LA SCIENCE DU DROIT DES GENS

Dans la série, longue déjà et toujours grandissante des hommes de talent qui ont servi la cause du droit international, John Westlake figure parmi les plus éminents. Il a dominé par le sens juridique affiné autant que par la force de l'argumentation. La pratique des affaires avait assoupli en lui la raideur et l'espèce d'obstination qui résultent trop souvent de l'étude des principes. Ses connaissances historiques étaient fort étendues et lui permettaient de donner aux problèmes du droit des gens des solutions conformes à la justice et propres à garantir les intérêts de la civilisation moderne. Il avait des vues originales, qu'il exposait avec clarté et avec concision et, en certains points, il fut un novateur. Ma tâche se borne à faire ressortir son mérite en ce qui concerne le droit international ; je puis me contenter ainsi de constater que son œuvre fut considérable dans le domaine du conflit des lois et qu'ici aussi il exerça une bienfaisante action.

Après avoir fait à l'Université de Cambridge de

brillantes études, John Westlake, qui se destinait au barreau, entra à *Lincoln's Inn*, l'une des glorieuses corporations d'avocats de Londres, le 17 novembre 1854. Il a raconté lui-même comment, pendant son stage, un de ses patrons l'engagea vivement à traiter dans un livre la matière du conflit des lois ; il suivit le conseil et il publia, en 1858, le 'Treatise on private international law,' dont la cinquième édition parut, en 1912, sous le titre : 'A treatise on private international law, with principal reference to its practice in England.' Dans la première édition, l'auteur faisait connaître la notion qu'il se formait de la discipline juridique à laquelle il consacrait son ouvrage. 'Le droit international privé,' écrivait-il, 'est la partie du droit national qui doit son origine au fait de l'existence dans le monde de juridictions territoriales différentes avec des lois différentes. . . Sa place,' ajoutait-il, 'se trouve dans le domaine du droit national. Il est appliqué par des tribunaux nationaux ; il a généralement des particuliers comme sujets, bien que ses règles s'appliquent, tout comme celles de tout autre département du droit national, aux États eux-mêmes lorsque ceux-ci se soumettent à la juridiction des tribunaux nationaux.'

D'importants problèmes se posaient à cette époque dans la politique générale. L'Italie accomplissait l'unité que ses enfants les plus illustres avaient rêvée et souhaitée pendant des siècles ; l'Allemagne se préparait au rôle qu'elle prétendait

remplir ; dans la plupart des pays de l'Europe des aspirations vers la liberté se manifestaient avec une intensité toujours plus grande. Aux États-Unis, se livrait une lutte d'une violence inouïe, dont l'enjeu était, en définitive, l'abolition de l'esclavage noir. Une phase nouvelle semblait commencer dans l'histoire de l'humanité. De fait, de grandes modifications s'introduisirent et, en ce qui concerne notamment le droit des gens, une transformation presque complète s'opéra. Dès lors, apparaissaient déjà les traits principaux d'une société des États s'étendant peu à peu sur le globe tout entier ; dès lors aussi, se montrait la caractéristique principale de tous les desseins, de toutes les entreprises, de tous les achèvements, caractéristique qui se résume en ce mot : l'internationalisme.

Westlake avait l'esprit trop ouvert pour ne point saisir que la direction nouvelle était en conformité avec les intérêts mêmes du monde moderne. Il se jeta dans le mouvement et donna à l'œuvre l'assistance de sa vigoureuse intelligence et de son indomptable énergie. Deux hommes l'assistèrent, dont les noms resteront inséparables de son nom, Gustave Rolin-Jaequemyns et Thomas-Michel-Charles Asser. Comme résultat final, ce concours et cette combinaison d'efforts assurèrent, on peut le dire, plus d'un progrès dans la science du droit des gens.

L'action personnelle de John Westlake se manifesta d'abord par des écrits et par des discours relatifs à certains problèmes du droit de la guerre. C'est

ainsi que, le 7 novembre 1862, il soumettait à une société scientifique de Londres l'intéressant travail : 'On commercial blockades.' La *Juridical Society* avait tenu sa première séance, le 12 mars 1855 ; elle fut assez active jusqu'en 1870, puis elle sembla se relâcher et elle tint une dernière séance au mois de mai 1874. Trois volumes et cinq livraisons renferment les études présentées par les membres. John Westlake figura parmi les fondateurs de l'Association. Il ne fut pas seul à s'occuper du droit des gens. Un avocat, H. H. Shephard, traita de la capture de la propriété privée sur mer, et, à l'occasion de la guerre franco-allemande, un autre avocat, H. R. Droop, exposa les rapports de l'armée envahissante avec les habitants du territoire occupé et les conditions nécessaires pour que les troupes irrégulières aient droit au même traitement que les soldats réguliers.

Comme Westlake en fait l'observation dans sa savante étude, l'obligation de respecter les blocus et l'interdiction de transporter des objets de contrebande constituent les deux empiètements des belligérants sur la liberté d'action des neutres.

Au sujet du blocus, Westlake soutenait que cette mesure devait être limitée aux places fortes et aux ports militaires, et qu'elle ne pouvait pas s'appliquer aux ports de commerce. La thèse n'était point nouvelle ; des traités l'avaient adoptée dans la seconde moitié du XVII[e] siècle ; en 1800, John Marshall, secrétaire d'État des États-Unis, l'avait

soutenue incidemment ; le 21 novembre 1806, dans le fameux décret de Berlin, Napoléon avait reproché au gouvernement anglais d' ' étendre aux villes et aux ports de commerce non fortifiés, aux havres et aux embouchures des rivières, le droit de blocus qui, d'après la raison et l'usage de tous les peuples civilisés, n'est applicable qu'aux places fortes.' En 1859, Lewis Cass, secrétaire d'État des États-Unis, venait de soutenir que le blocus d'une côte ou de positions commerciales sans rapport avec une opération militaire, dans le seul dessein de faire la guerre au commerce et, de par la nature des choses, au commerce des neutres, est difficilement conciliable avec les droits de ces derniers.

Dans l'étude qu'il présenta à la *Juridical Society*, le jurisconsulte anglais défendait avec force la théorie progressive dont nous avons retracé l'historique, et dont Richard Cobden venait de s'affirmer l'éloquent protagoniste. Il s'attachait surtout à réfuter l'argument suprême invoqué par les publicistes favorables aux prétentions des belligérants, à savoir la ' nécessité ' qui, selon eux, autorisait la destruction même du commerce des neutres. La question du transport des objets de contrebande n'était pas sans préoccuper Westlake ; quelques années plus tard, il la traita de façon approfondie et se prononça avec netteté contre l'erreur qui consistait à vouloir imposer aux gouvernements neutres l'obligation de prohiber l'exportation des objets pouvant servir directement ou indirectement à la guerre. ' La

coutume des nations,' disait-il au mois de novembre 1870 devant les membres de la *National Association for the promotion of Social Science*, 'laisse chaque belligérant libre de tirer avantage du trafic des munitions de guerre ou de la violation des blocus dont les neutres courent les risques, en tant que ces entreprises servent ses desseins ; elle le laisse libre de les réprimer dans la mesure de ses forces, en tant qu'elles profitent à son adversaire. Elle l'arme à cet effet, aux dépens des neutres de deux droits importants : le droit de visite et de recherche en pleine mer et le droit de saisie et de condamnation. Les circonstances de telle guerre donnée peuvent rendre ces aventures ou très difficiles, ou très aisées, exceptionnellement avantageuses pour l'un des belligérants ou particulièrement préjudiciables pour l'autre ; mais aucune de ces raisons ne fait naître pour le souverain neutre l'obligation de les arrêter, ni ne le rend coupable de malveillance ou de négligence pour n'avoir pas essayé de le faire.'

Ce fut en 1862 que commencèrent les relations de John Westlake avec quelques esprits distingués du continent européen, qui cherchaient à réaliser le même rêve : le triomphe du droit dans la société internationale. J'ai nommé deux de ces hommes : Rolin-Jaequemyns et Asser ; je dois ajouter Rivier et Bluntschli et j'aurai bientôt l'occasion de mentionner quelques autres personnalités de grand mérite.

En Angleterre, avait été fondée, en 1857, une société qui rendit des services durables : *The National*

Association for the promotion of Social Science. C'est sur le modèle de cette société qu'un des membres, Michel Corr, Irlandais de naissance, Belge par la naturalisation, créa avec quelques amis l'*Association internationale pour le progrès des sciences sociales.* En des sessions qui se tinrent, de 1862 à 1865, à Gand, à Bruxelles, à Amsterdam et à Berne, l'*Association internationale* fit preuve d'une activité remarquable : bien des problèmes de droit, d'économie politique, d'organisation sociale furent examinés et discutés dans un esprit exempt de tout parti pris. Là, se rencontrèrent et se connurent pour la première fois Westlake et ceux qui devaient devenir ses collaborateurs.

La création de la 'Revue de droit international et de législation comparée' est de la fin de 1868. Dans la pensée de ses fondateurs, le recueil devait renfermer les travaux de publicistes de différents pays. Asser avait suggéré l'idée en juillet 1867, et Rolin-Jaequemyns avait consulté aussitôt Westlake. Les discussions et les délibérations aboutirent : la première livraison parut. Comme Asser l'a constaté, le plan primitif s'était élargi peu à peu ; on avait songé, d'abord, à se borner aux questions concernant l'application de la loi étrangère et à la législation comparée ; la 'Revue' fut également consacrée à l'étude du droit des gens ; c'est le grand jurisconsulte italien, Mancini, qui avait fait prévaloir cette manière de voir. Est-il besoin de dire que Westlake apporta à la 'Revue de droit international et de législation comparée' son dévouement, son talent, son inlassable

activité ? Pour s'en convaincre, il suffit de parcourir les quarante-quatre volumes de la collection.

Bluntschli a fait la remarque que, grâce à la 'Revue,' il s'était formé sur le sol neutre de la Belgique un centre vers lequel convergeaient de multiples efforts. Ainsi se réalisa un projet qu'avaient déjà conçu comme lui quelques esprits avisés, mais que Rolin-Jaequemyns eut la gloire de mettre à exécution. Il a raconté comment il fut amené à prendre l'initiative de l'entreprise. Dès le mois le juillet 1871, Francis Lieber lui écrivait de New-York au sujet de 'l'utilité d'un congrès composé des principaux juristes adonnés plus spécialement au droit international, congrès sans caractère officiel, mais public et international, lequel se réunirait pour trancher des questions importantes et douteuses.' Presqu'au même moment, Gustave Moynier s'adressait également à lui et l'entretenait d'un projet analogue. Des jurisconsultes et des hommes d'État le stimulèrent de leurs encouragements : parmi eux étaient Bluntschli, Holtzendorff, Carlos Calvo, Drouyn de Lhuys, Parieu et Katchenowsky. 'L'idée d'une conférence de juristes du droit international,' écrivait Bluntschli, 'm'a souvent aussi préoccupé et je suis fort désireux de voir formuler les propositions que vous me promettez. En attendant, je me permets de vous communiquer la forme que l'idée a provisoirement prise en moi : le point capital me paraît être de créer une institution permanente, durable, qui insensiblement puisse et doive devenir une autorité

pour tout le monde.' Asser et Westlake assistaient Rolin-Jaequemyns dans ses efforts. Au mois de mai 1873, Westlake et Rolin-Jaequemyns se rendaient à Heidelberg pour s'entendre avec Bluntschli sur les grandes lignes du projet.

Le 8 septembre 1873, l'Institut de droit international tint sa première séance à Gand ; onze membres étaient présents ; vingt-deux adhérents n'avaient pu assister aux travaux. Mancini prononça le discours d'ouverture. 'Nous aspirons à codifier,' disait-il, 'sinon, pour le tout, au moins en partie, les règles obligatoires applicables aux relations internationales et à substituer, du moins dans la plupart des cas, aux chances aveugles de la force et à la prodigalité inutile du sang humain, un système de jugement conforme au droit.' À Mancini, rappelons-le, est due la belle devise de l'Institut : *Justitiâ et pace.* Rolin-Jaequemyns décrivit la mission de la nouvelle association. 'C'est à la science du droit,' disait-il, 'qu'il appartient de déterminer, non pas en une fois, en une heure d'enthousiasme, mais lentement, à force de recherche et de réflexion, le sens dans lequel le mouvement peut aboutir. . . L'esprit auquel il faut faire appel n'est pas celui de l'abbé de Saint-Pierre, mais celui de Grotius, dont le ferme bon sens visait avant tout de réaliser la justice dans la limite du possible.'

L'Institut a rendu à la science du droit des gens et à la science du conflit des lois des services que personne ne songe à contester. Non seulement il a

provoqué un mouvement puissant dans ces domaines du savoir juridique et suscité ainsi la composition d'ouvrages remarquables ; mais par le travail collectif de ses membres, il a contribué à la rédaction de déclarations, de règlements, de projets de conventions internationales qui ont montré la voie à suivre et qui ont eu l'honneur d'être imités et même complètement adoptés dans les Conférences de la Paix de 1899 et de 1907 et dans les Conférences de droit international privé.

Dans l'œuvre de l'Institut, Westlake eut une large part ; il collabora aux travaux préparatoires de presque toutes les sessions ; avec une grande régularité, il assista aux réunions, ne reculant point devant les fatigues de voyages parfois longs ; il n'est guère de discussion importante où il n'ait fait entendre sa voix toujours écoutée.

John Westlake a beaucoup écrit sur les questions de droit des gens qui ont surgi dans les dernières quarante années. Nombre de ses articles ont paru dans des revues anglaises : les plus importants ont été insérés dans la ' Revue de droit international et de législation comparée.' Quelques-unes de ses études ont, d'ailleurs, suscité des réponses dues à des publicistes de la valeur de Frédéric de Martens, de Martens Ferrão et du professeur de Louter, pour ne citer que ces noms. Il s'agissait, dans ces cas, de problèmes historiques et politiques comme les rapports de la Russie et de la Grande-Bretagne en Asie centrale, les frontières de la Grande-Bretagne

et du Portugal en Afrique et la guerre de la Grande-Bretagne contre les républiques sud-africaines. Il avait fait paraître, en 1868, une étude substantielle, peu connue sur le continent européen : ' The Church and the Colonies.'

En 1888, le savant jurisconsulte fut appelé à occuper la chaire de droit international fondée, en 1868, à Cambridge par William Whewell et dont Sir William Harcourt et Sir Henry Sumner Maine avaient été successivement les titulaires. Il prononça sa leçon inaugurale le 17 octobre. Après vingt années d'enseignement, il prit sa retraite et fut remplacé par le professeur Oppenheim.

Un ouvrage important a été consacré par John Westlake à l'ensemble de la science du droit des gens ; c'est le traité : ' International law ' ; il comprend deux volumes ; le premier est intitulé : ' Peace ' ; le deuxième : ' War.' Le tome I a paru en 1904 ; le tome II en 1907. Une deuxième édition revue et augmentée du tome I a été publiée en 1910 ; dans les derniers mois de sa vie, l'auteur a complété le tome II, dont une édition nouvelle ne tardera pas à paraître. En 1894, John Westlake avait réuni quelques études fondamentales sous le titre : ' Chapters on the principles of international law ' ; une traduction en langue française parut presque immédiatement après la publication de l'ouvrage original.

Les volumes ' International law ' et le volume ' Chapters on the principles of international law '

renferment des pages d'une importance considérable pour la science du droit. Non seulement, l'auteur expose avec talent les questions, objet de son étude, mais avec une grande puissance d'analyse il raisonne, il critique, il discute. Sur plus d'un point, il développe des idées neuves.

Résumer les livres dont je viens de parler serait une tâche dépassant les limites qui me sont tracées ; je me contenterai de donner une vue d'ensemble et d'indiquer des passages particulièrement significatifs.

Dans le premier volume d' 'International law,' l'éminent écrivain passe d'abord en revue les sources et les principes du droit des gens ; il étudie l'origine des États, leur classification, leur continuité et leur extinction ; il consacre des développements assez longs à l'acquisition de la souveraineté dans les régions non-civilisées, acquisition dont des formes nouvelles ont apparu dans les dernières années du XIX^e^ siècle. Il décrit la vie internationale, l'entrecours des États, l'action politique et l'action diplomatique et il fait un exposé du mouvement qui s'est produit dans le monde moderne en faveur de l'arbitrage comme moyen de résoudre les conflits des États. Il appelle de tous ses vœux la solution pacifique et juridique, sans se dissimuler que de redoutables obstacles se dressent.

Dans les 'Chapters on the principles of international law,' l'auteur avait examiné le droit international dans ses rapports avec le droit en général, et fait ressortir que la société des États n'avait guère

d'organisation et qu'elle n'accomplissait pas d'actes réellement collectifs. A ce point de vue, les Conférences de la Paix de 1899 et de 1907 marquèrent d'indéniables progrès. Westlake les salua avec joie, comme l'attestent ses volumes de 1904, de 1907 et de 1910.

Dans la deuxième partie d' 'International law,' l'auteur s'occupe de la guerre et de la neutralité. Le volume, avons-nous dit, parut en 1907 ; le savant professeur a pu insérer un important chapitre concernant les travaux de la deuxième Conférence de la Paix, qui avait clôturé ses travaux, le 18 octobre de la même année.

John Westlake est obligé de constater que, dans la phase actuelle de la civilisation, la guerre est un mode de faire valoir le droit ; mais il approuve toutes les mesures d'humanité. En un passage des 'Chapters,' il note que les règles ou principes d'action existant parmi les nations au sujet de la guerre se rangent sous deux grandes divisions : la première a trait à l'action des belligérants les uns envers les autres, la seconde a trait à l'action d'un belligérant à l'égard des neutres. 'La dernière de ces divisions,' dit-il, 'l'emporte sur toutes les autres parties du droit international par la clarté avec laquelle elle montre tous les États civilisés comme des membres d'une société. Il n'est aucune autre branche dont les règles aient été façonnées dans leur forme présente par une coopération aussi générale, aussi active de tous les membres de la société. . . Pour nous, qui

concevons le droit comme le corps des règles d'une société, parmi toutes les généralisations possibles dans les affaires internationales, les règles de la neutralité constituent à un degré éminent un droit. Pour les droits et les devoirs des bélligérants, le cas est fort différent. Quand les puissances tierces interviennent dans une guerre, ou quand elles font sentir une pression lors de la fixation des conditions de paix, elles agissent pour des raisons politiques qui ont trait au résultat à obtenir et non à une violation de règles dont l'un des belligérants se serait rendu coupable à l'égard de l'autre. . . Quand nous traitons les lois de la guerre comme un droit, nous n'avons pour nous appuyer que le seul fait que l'opinion générale de la société internationale intervient dans la formation des règles et qu'elle permet à chacun des belligérants d'en assurer par la force l'observation à son égard, si, bien entendu, il est à même de le faire. Nous nous trouvons devant le fait que de toutes les parties du droit international, le droit de la guerre offre le moins de facilités pour donner une expression définie à l'opinion et pour permettre à un belligérant de faire respecter lui-même le droit que l'opinion réclame.'

Quand, en 1894, Westlake écrivait ces lignes, il pouvait ajouter que les gouvernements avaient aidé à éclairer l'opinion publique ; qu'ils avaient rédigé des règles pour leurs armées ; qu'ils avaient conclu les conventions de Genève et de Saint-Pétersbourg et que, dans la Conférence de Bruxelles de 1874, ils

avaient fait un grand pas vers la préparation d'un code militaire international. Les conventions de la Haye de 1899 et de 1907 confirmèrent ses espérances et réalisèrent ses vœux.

Il est un sujet sur lequel le savant professeur a plusieurs fois exprimé son opinion. C'est la thèse exposée par Jean-Jacques Rousseau. 'La guerre,' écrit l'auteur du 'Contrat Social,' 'n'est point une relation d'homme à homme, mais une relation d'État à État, dans laquelle les particuliers ne sont ennemis qu'accidentellement, non point comme hommes ni même comme citoyens, mais comme soldats ; non point comme membres de la patrie, mais comme ses défenseurs. Enfin chaque État ne peut avoir pour ennemis que d'autres États, et non pas des hommes, attendu qu'entre choses de diverses natures on ne peut fixer un vrai rapport.' Westlake combat cette manière de voir ; il la taxe d'extraordinaire légèreté. Sans songer un seul instant à examiner si son argumentation est fondée, je note l'insistance qu'il a mise à manifester sa manière de voir ; celle-ci apparaît dans les 'Chapters,' dans l'ouvrage 'International law' et en plusieurs études.

Une question de portée capitale, celle de la capture de la propriété privée ennemie sur mer, a été exposée avec beaucoup de talent par l'éminent publiciste. Il admet la légitimité du procédé ; il discute les cas d'opportunité ; s'inspirant de l'intérêt de la Grande-Bretagne, il enseigne qu'au début d'une guerre celle-ci devrait offrir à l'ennemi de conclure une convention

aux termes de laquelle les deux adversaires s'abstiendraient de toute prise maritime, en dehors des cas de blocus et de contrebande, sauf pour chaque partie à la dénoncer à courte échéance.

Parmi les dernières manifestations de l'incessant labeur du savant jurisconsulte, je ne puis omettre de mentionner la rédaction de la notice historique qui figure en tête du traité ' De jure et officiis bellicis et de disciplinâ militari ' de Balthazar de Ayala. Ce livre fait partie de l'intéressante collection des Classiques du droit international dirigée par James Brown Scott. L'illustre professeur d'Oxford, Thomas Erskine Holland, avait fait paraître l'ouvrage principal de Richard Zouche. Westlake se chargea de la publication de l'ouvrage de Balthazar de Ayala, que John Pawley Bate traduisit en anglais.

Je n'ajouterai point à ces indications ; elles me semblent suffisantes pour caractériser l'œuvre du savant éminent auquel ces pages sont consacrées et pour justifier les lignes que j'ai écrites en l'honneur du grand homme que fut John Westlake.

ERNEST NYS.

John Westlake

from a daguerrotype taken about 1850

IV

PUBLIC AFFAIRS

I PRIZE highly the privilege of being associated with this memorial volume, yet I fear my contribution to it must be poor and insufficient. It cannot do justice to the range of John Westlake's power: it can scarcely express adequately my personal obligations to him. I do not remember the commencement of our acquaintance. He was five years my senior in the University, and had left it before I began to reside at Cambridge in 1851; but I must have come to know him soon after I took up residence in London, and in the early sixties acquaintance ripened into intimacy and friendship. A circumstance which doubtless helped this development was the fact that Westlake, like myself, was a zealous Cornishman. He had an intimate knowledge of his native county. Early in his professional career, he began to spend his long vacations within it, and later he acquired a second home on the cliff side of its north-western coast between St. Ives and the Land's End. During his earlier married life

I was a frequent guest at the very attractive gatherings in his hospitable house in Oxford Square, and for his last thirty years we were near neighbours in Chelsea, and I often passed along the Embankment to consult him on questions of public interest. I never sought the help of his abundant knowledge in vain, and his clear, prompt, and ready judgment solved many doubts and difficulties. For a long time I never differed from him without hesitation and reconsideration of my own opinion, and if this must be qualified in later years, when it appeared that our lines of thought on some public questions had become divergent without any promise of being again brought together, this separation never detracted from the respect I felt for the courage, sincerity, and thoroughness with which he had worked out his own conclusions.

Westlake was always an independent searcher after truth; but, in the mid-nineteenth century, he would have confessed, with so many of his generation, deep obligations to Maurice and Mill. In another part of this volume the story is told of his enrolment, under Maurice, in the service of the Working Men's College, and of his faithful work therein up to the time of his death. Mill's zealous support of minority representation doubtless strengthened, if it did not originate, Westlake's acceptance of the principles of the great work of his father-in-law, Mr. Hare; and it was in relation to proportional representation, as we now call it, that my own political intimacy

with Westlake first deepened, as it was in support of the same cause that we were working together in the last month—I may say the last week—of his life. Minority representation became a living question in the Reform debates of 1867, when Mr. Mill and Mr. Fawcett, supporters of the Bill then before Parliament, and Mr. Lowe and Lord Robert Cecil (Lord Salisbury), strong opponents of it, pressed for the introduction of the principle into the measure; which introduction, it may be remembered, was ultimately carried, despite the combined opposition of the three leading political personages of the time—Mr. Gladstone, Mr. Disraeli, and Mr. Bright. The controversy was fierce to a degree now scarcely to be apprehended, and Westlake's interest in it was keen and sustained to the end. He was a convinced and unflinching Liberal, but his experience as a voter and active member of the party in Marylebone, the characteristics of which were repeated in almost every metropolitan borough of the time, had deepened his conviction of the fundamental errors of our representative system, and inspired him with a zeal for its radical reform which never wavered, which indeed gathered in intensity to the end of his life His belief in proportional representation was not indeed exclusive. He was to the fore in every movement—social, educational, political—for the improvement of his generation. It was not a mere accident that he was found an advocate in nearly every suit of his time for maintaining liberty of

opinion within the Churches. He promoted every movement for the extension of the sphere of the activities of women and the removal of their political disabilities, and he followed up his service at the Working Men's College by taking a very active part in the first School Board elections in London, especially in promoting the election of Miss Garrett (Mrs. Garrett Anderson) for Marylebone. His sympathies, like those of his friend, Tom Hughes, were with the North throughout the American Civil War, and however painful the recollection, it must never be forgotten that Northern sympathisers were at the time in a sad minority among 'the classes.' Westlake had a personal knowledge of the Northern and middle States, arising from a professional visit to New York in a case involving points of much difficulty in 1860, the year before the commencement of the War of Secession. This knowledge was exemplified in a paper in the *Working Men's College Magazine* for October 1861, entitled 'The American Constitution and the War.' In this contribution Westlake dealt frankly, and even rigorously, with the constitutional difficulties of the Northern position, but added: 'That the election of Mr. Lincoln upon the Chicago platform was a righteous act, I entertain no manner of doubt: the position had become intolerable, and a way was to be found out of it at all hazards, and by cutting through all legal cobwebs.' To Westlake, as to most men of that time, the war seemed to involve a breach of the continuity of the development

of the United States, which the genius of the American people has almost miraculously repaired. The whole paper is well worth study as the contemporary expression of the judgment of an independent mind; and it is a pity that it is not now easily accessible so that it might be read in conjunction with his maturer conclusions in his chapter on the 'Foreign Relations of the United States during the Civil War' in the twelfth volume of the 'Cambridge Modern History.' The contribution to the Cambridge volume is, moreover, valuable as containing a review of the conduct of the *Alabama* Arbitration, and Westlake's judgment on the three 'rules' of international law agreed upon in the Treaty of Washington.

I have said how Westlake's zeal for proportional representation was developed under his experience of borough politics in Marylebone. The time was coming when his professional and public position would naturally lead him to become a parliamentary candidate, and parliamentary candidates are apt to accept political organisation as they find it. But when the enfranchisement of the agricultural labourer and consequent redistribution of seats became imminent in 1884, Westlake energetically associated himself with the formation of the Proportional Representation Society; became a most active member of its executive committee, and was strenuous in advocating, in speech and in writing, the introduction of the principle into the new Reform Bill. The effort was baulked by the agreement

made between the leaders of the two great parties to adopt single-member constituencies; but Westlake remained among those who up to the last, on platforms in town and country, strove to ward off what they believed to be a most mischievous departure. As a fellow-worker in committee-rooms and at public meetings, I can testify to the help he gave in counsel, in argument, and in persuasion, until the controversy was suspended by the passing of the Act and the dissolution of 1885. In the general election that followed, he was Liberal candidate for Romford, a constituency not then so swollen in population as it has now become, but still large enough to tax his utmost energies and, indeed, one of the biggest then in existence. It now far exceeds any other, the electorate having grown to more than fifty thousand. In 1885, the contest was sufficiently arduous, as I was myself able to witness, Westlake and Mrs. Westlake giving days and nights to an unremitting labour, which resulted, in December, in a hardly won victory, the numbers being: Westlake, 4370; Theobald (Conservative), 4306. Everyone knows that in the short parliament which followed Mr. Gladstone came into office, brought in his first Home Rule Bill, and was defeated upon it, and Westlake's action in the session of five months must be mainly associated with Home Rule. Little else occupied the House of Commons, but students of Hansard will find that Westlake intervened in debate on four or five minor questions in a way

to illustrate his independence and his Liberalism. Thus in a discussion of a motion by the late Mr. James Stuart dealing with the still vexed question of the control of the Metropolitan police, Westlake made the important suggestion that this force should be divided into two parts, one under the authority of the executive government and the other, as elsewhere throughout Great Britain, under local management. On another occasion he vindicated the rights of mothers to be placed on an equality with fathers in respect of the appointment of guardians of children ; and once more we find him joining the late Mr. Richard Chamberlain in throwing out a private Bill which had come down from the Lords enabling a railway to be made along a portion of the south coast of the Isle of Wight, from Shanklin to Freshwater. As no attempt has been made, as far as I know, to revive this project, the opposition to it, inspired by the desire to preserve the amenity of the commons and downs of this part of the island, seems to have been amply justified. Westlake's share in the work of the session was his weighty speech on Mr. Gladstone's Home Rule Bill. Home Rule was, in truth, the beginning and the end of that short session and short parliament. It would be out of place to examine in detail this profoundly interesting development of our national history. The Liberal party went through the general election of 1885 as opponents of Home Rule, and Mr. Gladstone was accepted as their leader in this resistance.

The attitude thus taken was demonstrated by the orders issued by Mr. Parnell and his lieutenants to the Irish Nationalist electors of Great Britain to vote against every Liberal candidate, with the exception of two who were pledged to Home Rule. The general election, however, convinced Mr. Gladstone of the necessity of taking a new departure, and the Government he formed presently produced a complete Home Rule Bill. Westlake could not join in this change of attitude. He was prevented by something more than the necessity of fulfilling his election pledges. He believed firmly in the maintenance of one Parliament for the United Kingdom under which local councils might, no doubt, be called into existence, charged with large administrative powers, and he did not see in the facts brought to light in the course of the general election any ground for abandoning this belief. He continued to hold the same attitude to the end of his life. I am not sure he was not confirmed in his estimate of the inadequacy of the reasons generally advanced as establishing the necessity of the great change. The speech on Mr. Gladstone's Bill was delivered on May 25. He spoke when the House was thinning after a powerful and passionate argument by Sir Charles Russell, and members were recovering themselves to listen later in the evening to a strong attack on the Bill by Sir George Trevelyan, and a fierce rejoinder by Mr. Healy. Westlake's interposed argument was characteristically calm and close. He

confined himself to two points: first, the complete absence in the Bill of any executive authority to enforce in Ireland what might be the will of the Imperial Parliament; and second, the difficulty of overriding the determined resistance of the north-eastern corner of Ulster. These are to this day (November 1913) the critical issues of the controversy, and it deserves to be noted how Westlake seized the points which remain outstanding through the successive transformations of Home Rule Bills. I have never well understood how Westlake came to be opposed by Mr. Theobald at the general election which followed the defeat of Mr. Gladstone's measure. It had been agreed that Liberal members voting against the Home Rule Bill should receive the support of the Conservative party in the election that would follow; but Romford became an exception to this agreement with, if I remember rightly, only one other constituency, and in a three-cornered contest with a Gladstonian in the field, Westlake suffered inevitable defeat. This did not prevent his standing again as a Unionist candidate in 1892, when he spent much time and labour in fighting St. Austell, but without success. Thenceforward, though his opposition to Home Rule became perhaps stronger rather than weaker, his energies were more actively addressed to foreign questions, including the development of international law, and to the promotion of proportional representation. Other sections of this volume deal with his action touching

Finland, the Balkan Committee (of which he eventually became chairman), and his great work on the 'Institut du Droit International.' Supplementary to these, special reference may be permitted to another illustration of his incessant watchfulness over international difficulties involving questions of law. When Mr. Cleveland's action in the matter of our dispute with Venezuela almost threatened war between the United States and ourselves, Westlake, in a letter to *The Times* in January 1896, was the first to broach a modified form of arbitration of the Venezuelan Boundary dispute. His suggestion was, partially at least, embodied in the treaty of arbitration Lord Salisbury negotiated with the American Government in the following year. He was less successful in his advocacy of the Declaration of London. His argument in favour of sanctioning this agreement, more than once made public in the last two years of his life, was marked with all his old calmness and moderation of judgment, but the House of Lords, after some apparent hesitation, passed a hostile vote which for a time at least put the Declaration into the background.

Yet another illustration may be given of Westlake's zealous activity in respect of public questions. The failure of the licensing proposals of Mr. Goschen in 1890 inspired the formation of the Westminster Licensing Reform Committee, mainly composed of Liberal Unionists interested in the promotion of the temperance legislation, in whose

work Westlake took an active part. The result was a very carefully drawn Licensing Bill ready for introduction into the House of Commons in the spring of 1892, though it did not in fact make its appearance until the next year, after a general election had brought Mr. Gladstone again into power. In 1893 the second reading of this Bill, formed so largely under Westlake's counsel, was carried in the House of Commons by a considerable majority, but it got no further, and the Government's own Bill on the same subject was thrown out by the Lords. The Westminster Committee struggled on with their work and it is not too much to say that it was partly at least owing to the pressure they exercised that Lord Peel's Royal Commission was set up. In a record of this story now lying before me, I find a copy of a letter addressed to Mr. Balfour on February 29, 1896, submitting by request proposed terms of reference for the Royal Commission, and the second of the four signatures of the letter is that of Westlake.

I must, however, conclude by referring to what he did in connection with proportional representation, though my conversations with him on other questions were frequent and close. When the Proportional Representation Society became active again in 1905, he at once resumed his position as a diligent member of the executive committee in constant attendance at its sittings. He could not take the same part as before on public platforms, but his co-operation was otherwise unstinted. His

counsel was ever at hand, his advice sought and followed on almost every point of procedure; correspondence with inquirers at home and abroad, foreign and colonial, passed under his scrutiny and shaped after consultation with him. The journal of the Society was enriched by his contributions directed to the solution of difficulties which had been raised by friends or opponents. He was generous in time, in labour, and in money, and as I have already said, his activity was maintained up to the last week of his life. His faith in the principle of proportional representation was absolute; and whilst he rejoiced in the successes which had been achieved, and were in progress of achievement, he had a conviction of future triumphs extending throughout all civilised nations accepting representative government. I express but feebly the respect and affection of his associates for an untiring zeal that rose above all physical infirmity and left them an example they would humbly desire to follow.

COURTNEY OF PENWITH.

V

L'ŒUVRE DE JOHN WESTLAKE

D'AUTRES ont déjà rendu au regretté professeur John Westlake les pieux devoirs de l'affection personnelle et de la reconnaissance scientifique. Ils ont dit sa vie et ses œuvres, sa part de collaboration à la ' Revue de droit international,' son influence sur le droit privé anglais et sur le droit international public. Enfin il a reçu le touchant hommage des disciples, qui gardent au cœur le souvenir du maître. Mais ce n'est pas seulement l'Angleterre où il a exercé une si haute et si légitime influence, la Belgique et les Pays-Bas, où il comptait tant d'amis, c'est la France aussi qu'atteint sa disparition.

Rares sont les jurisconsultes qui, dans l'étude du droit international, ont simultanément développé le double aspect, public et privé, de cette science. Malgré la communauté du nom, l'unité du milieu, le droit international public et le droit international privé, ces deux règles d'une même vie—la vie internationale —ont des disciplines indépendantes, des méthodes séparées qui demandent, pour être utilement employées,

des formations juridiques distinctes et des talents différents. Bien peu d'esprits sont assez puissants, bien peu de tempéraments assez souples, bien peu d'éducations juridiques assez fortes, pour permettre, avec un égal succès, l'étude simultanée du droit international public et du droit international privé. Le droit public requiert une grande culture historique et philosophique, le droit privé une connaissance approfondie des lois civiles, commerciales et de procédure. L'un est plus fluide et l'autre plus fixe, l'un plus large, parfois plus incertain, l'autre plus étroit et plus sûr; l'un fait plus de place aux spéculations théoriques, l'autre demande davantage à l'analyse minutieuse des réalités pratiques et des espèces jurisprudentielles.

Aussi compte-t-on les jurisconsultes qui ont cultivé l'une et l'autre science avec un même bonheur. Les maîtres du droit international privé, Bartole, d'Argentré, Dumoulin, Boullenois, Savigny, Story, Wharton, Laurent, n'ont jamais abordé l'étude du droit international public. Les grands jurisconsultes de droit international public, Vattel, Wheaton, de Martens, Klüber, Heffter, Calvo, Bluntschli, Rivier, ne se sont pas engagés dans l'étude du droit international privé. Parmi les contemporains, en Angleterre même, Dicey, que le droit constitutionnel ne laisse pourtant pas indifférent, réserve au droit international privé une activité qui jamais ne s'étend au droit international public, tandis que près de lui, à Oxford, Holland, au contraire, se restreint à l'étude du droit des gens avec un exclusivisme qui s'obstine à

refuser au ' Conflit des lois ' le titre de ' droit international.' En Italie même, où les deux aspects juridiques de la vie internationale sont, depuis Mancini, menés de front, les écrivains qui s'occupent de l'un et de l'autre ne le font jamais également.

Westlake a, dans sa longue et laborieuse carrière, uni fraternellement les deux sciences jumelles. Fondateur de l'Institut de droit international avec Asser d'Amsterdam et Rolin-Jaequemyns de Gand, il a, dans le programme de cette Académie, puis dans les travaux qu'il lui a donnés, toujours associé les problèmes du droit international public et ceux du droit international privé. Tandis qu'un certain nombre de ses collègues de l'Institut, tour à tour attirés par le droit international public et le droit international privé, passaient alternativement de l'un à l'autre, sans cependant cesser de marquer, soit pour l'un, soit pour l'autre, une évidente prédilection, Westlake n'établit entre eux, ni hiérarchie dans son esprit, ni préférence dans son activité. Aussi laisse-t-il dans le droit international, public et privé, une œuvre également grande.

D'autres, parmi ses contemporains, auront, sans doute, agi plus fortement sur la formation diplomatique du droit international, tant public que privé; nul plus que lui n'aura marqué dans son élaboration doctrinale. Si les circonstances ne lui permirent pas d'être l'homme d'action qu'il aurait pu être, ce fut du moins, dans toute la force du terme, un homme de science, un de ces hommes

rares, qui la servent, comme elle veut l'être, avec un désintéressement absolu. Il parlait soit en anglais, soit en français, d'une manière peut-être un peu lente, mais si refléchie, si méditée, avec un tel accent de conviction qu'il n'était pas, dans toutes les discussions, de parole plus écoutée que la sienne. Il ne cherchait ni l'élégance de la forme ni la finesse du trait. La passion de la verité suffisait à son esprit : elle ennoblissait sa parole, aussi grave que sa pensée.

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J. Westlake était un tout jeune homme—il n'avait pas trente ans—quand, sur le conseil d'un avocat de Londres, auprès duquel il se formait à la connaissance pratique du droit, il entreprit d'écrire 'A Treatise on Private International Law or the Conflict of Laws.' A ce moment, la vieille doctrine des Voet avait passé des Pays Bas en Angleterre, où l'avaient portée les avocats écossais, qui d'habitude achevaient leur instruction juridique en Hollande. La territorialité des statuts plaisait à l'insularité britannique, dont l'exclusivisme n'admettait que très exceptionnellement, au titre de la 'Comitas' ('Comity'), l'application des lois étrangères. Le 'Wills Act' de 1861 n'avait pas encore déclaré valable en Angleterre le testament fait à l'étranger dans la forme locale. Par dessus tout le juge anglais estimait que le droit international privé ('Conflict of laws, intermunicipal law'), simple prolongement du droit interne, ne

pouvait se développer qu'au moyen d'une jurisprudence formée d'espèce en espèce par les mêmes juges.

J. Westlake avait l'esprit trop large pour concevoir ainsi le droit international privé comme une technique jurisprudentielle étroite et routinière, d'où tout effort d'analyse, d'observation et de raisonnement serait banni. Son sens de l'humain et sa capacité d'abstraire, son goût de la déduction et sa connaissance des littératures étrangères se révoltaient contre une semblable interpretation du droit international privé. Il avait lu Fœlix et s'était profondément inspiré des doctrines de Savigny qui lui avaient enseigné l'insuffisance du système territorial, la pauvreté scientifique et pratique de la Comitas gentium, la nécessité d'arrêter sans préjugé la détermination de la loi applicable d'après l'observation attentive du rapport de droit. C'est à ces idées, toutes nouvelles en Angleterre, que J. Westlake entreprit d'initier les hommes de loi britanniques. Le livre alors en honneur auprès des juges anglais était le ' Conflict of laws ' publié en 1834 par l'américain Story. Le sous-titre du ' Conflict of Laws ' de Westlake indique sa méthode et son but, la comparaison des différents systèmes de jurisprudence : ' Conflict of laws with principal reference to its practice in the English and other cognate systems of jurisprudence.' Le droit anglais y est rapproché du droit continental, Story de Savigny. Tout imprégné qu'il soit des idées du dehors,

Westlake n'oublie pas qu'il est un praticien, écrivant pour d'autres praticiens, Anglais comme lui. Benthamiste, il n'est pas, comme tant d'autres disciples de Bentham, un philosophe auquel la technique du droit soit étrangère, mais un ' English lawyer ' formé dans ' Lincoln's Inn.' Au courant des doctrines du continent comme un savant d'Université, mais versé dans le droit anglais comme un professionnel de la barre, il ne cesse pas, en s'inspirant des idées continentales, d'en adapter les principes à l'Angleterre. Pénétré des vues européennes, mais cherchant à les combiner avec la tradition britannique, il s'attache à convaincre l'avocat et le juge que les principes acceptés par la doctrine continentale peuvent s'étendre à la solution de leurs ' cases ' sans meconnaître l'esprit général du droit anglais.

Une telle œuvre supposait un sentiment très fin des possibilités pratiques, mais en même temps la connaissance profonde de deux systèmes de droit différents. Elle exigeait, chez son auteur, la coexistence de deux esprits, l'un insulaire, l'autre continental, et leur fusion continue.

L'entreprise était difficile. Westlake y réussit. Malgré la résistance d'un droit aussi réfractaire à l'introduction des idées étrangères que le droit anglais, devant des juges dont le traditionnalisme attachait plus de force aux précédents qu'aux doctrines, l'influence du livre de Westlake n'en fut pas moins grande et son succès marqué. La première édition du ' Private international law ' est de 1858, la seconde de 1880, la troisième de 1890,

la quatrième de 1905, la cinquième de 1912. La progression de ces dates est significative. A mesure que le temps passe, le crédit de l'œuvre s'accentue. Il avait fallu vingt-deux ans à l'auteur, qui n'était pas magistrat, pour gagner la confiance des juges anglais, mais, une fois établie, son autorité se développa, large et profonde.

Sous son action décisive, la territorialité se limite : la personnalité s'étend. Il fait admettre qu'en matière d'état et de capacité la loi du domicile l'emporte sur la loi du lieu de l'acte, qu'en l'absence de contrat de mariage le domicile matrimonial détermine la loi applicable aux relations patrimoniales des époux. Toutefois c'est avec prudence qu'il introduit dans le droit anglais le principe du domicile : la capacité d'aliéner un immeuble dépend de la loi de la situation; si la succession mobilière est soumise à la loi du domicile du défunt, la disposition d'un meuble individuellement considéré dépend de la *lex rei sitae*. Il eut, toutefois, la tristesse de voir à l'extrême fin de sa carrière, dans les célèbres affaires *Ogden* c. *Ogden* [1] et *Chetti* c. *Chetti*,[2] la jurisprudence abandonner, en matière de capacité matrimoniale, la doctrine du domicile, en faveur de laquelle il avait si longtemps combattu, pour revenir à l'ancienne idée, d'après laquelle c'est, en pareil cas, la loi du lieu du contrat qui s'applique. Un étranger épouse-t-il une Anglaise en Angleterre ? C'est à la loi anglaise, la seule à laquelle ait, en s'engageant, réfléchi la femme que, d'après ces arrêts, il appartient de

[1] [1907] P. 107, [1908] P. 46. [2] [1909] P. 67.

déterminer la capacité matrimoniale de cet étranger : jurisprudence qui s'explique, en matière de mariage, par une pensée de protection de la femme anglaise, mais qui n'en est pas moins une fissure, par où l'autorité du principe du domicile, en matière d'état et de capacité, laisse pénétrer l'empirique application de la *lex loci contractus*. Une telle solution était, pour l'avenir, inquiétante. Et, dans sa correspondance personnelle, Westlake en laissa voir un découragement profond.

Il s'était donné pour tâche de faire pénétrer dans la jurisprudence anglaise, en droit international privé, des principes de justice et de raison. Mais justice et raison ne triomphent pas toujours.

Aux idées qu'il avait, après une longue méditation, acceptées comme siennes, il communiquait un éclat, une force incomparables. L'Institut de droit international gardera longtemps le souvenir de son impressionnante argumentation de Neuchâtel en faveur du *renvoi*. Quand la loi italienne décide, en vertu du principe de la nationalité, qu'un Danois, domicilié en Italie, est soumis, quant à son état et à sa capacité, à la loi danoise, entend-elle ainsi la loi danoise de droit interne ou celle de droit international privé, qui, par le principe du domicile, *renverrait* le juge italien à son droit interne ? Pourquoi ce *renvoi* au droit interne italien ? demandait le rapporteur, M. Buzzati. Si le juge italien est d'abord conduit par la règle de droit international privé de sa loi nationale à la règle de droit international privé de la

loi étrangère, il n'y a pas de raison pour qu'ensuite il ne soit pas, de même, ramené de la règle de droit international privé de la loi étrangère à la règle de droit international privé de sa loi nationale, et, dans ce cas, de la loi italienne à la loi danoise, et de celle-ci à la loi italienne, puis à la loi danoise : ainsi, de l'une à l'autre s'ouvre alors un circuit, qui jamais ne se ferme. A cette embarrassante objection, Westlake répondit, avec une sûreté parfaite, que si le juge italien, trouvant dans le loi danoise le principe du domicile, revient à la règle interne du droit italien, ce n'est pas en considérant que la loi danoise de droit international privé lui fait un devoir d'appliquer la règle du droit international privé italien, qui elle-même lui ferait un devoir d'appliquer celle du droit international privé danois, et, ainsi de suite, indéfiniment; mais, tout simplement, parceque le droit interne danois, auquel la loi italienne adresse le juge italien, se dérobe, faute d'une loi de compétence danoise qui le soutienne. La loi interne italienne s'applique, non parceque la loi internationale danoise l'exige, mais parceque la loi interne danoise refuse de fonctionner. Le législateur danois n'a pas *renvoyé* ; il s'est *désintéressé*. Le prestigieux argument du *circulus inextricabilis* était arrêté net, et l'objection désarmée. Il ne faut pas s'y tromper : c'est, en dehors de considérations d'ordre pratique, sur lesquelles il serait, actuellement, inopportun de s'étendre, la force et la lumière de l'argumentation de Westlake qui retiennent encore actuellement, dans la jurisprudence

du Reichsgericht et dans celle de la Cour de Cassation, la théorie si critiquable et si critiquée du renvoi.

Westlake, qui s'aidait des idées continentales pour agir sur le droit anglais, s'aidait aussi des idées anglaises pour influencer le droit continental. L'un et l'autre système se rencontraient en lui. Il avait dans l'esprit leur constant parallèle. Et, tout au moins sur la base du principe du domicile, il eût aimé en atténuer l'opposition. Il a même souhaité que l'Angleterre prît part aux Conférences de droit international privé de la Haye. Le '*splendide isolement*' n'était pas à ses yeux une doctrine juridique ; et si jamais, un jour, le réseau des conventions de droit international privé de la Haye, plus ou moins révisées, s'étend jusqu'à l'Angleterre et à l'Amérique, comme tant de généreux esprits le désirent, c'est à Westlake, au plus profond de son œuvre et de sa pensée, qu'en devra remonter l'honneur.

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En 1858 Westlake avait, d'un coup d'audace et de maîtrise, abordé le Conflit des lois. Quatre ans ne s'etaient pas écoulés qu'il publiait un nouveau livre : 'On commercial blockades.' Du droit international privé il passait au droit international public. Mais, au lieu de le prendre, dès le début, dans l'ensemble, il ne devait que lentement, de monographie en monographie et d'étude en étude, se saisir peu à peu de ce nouveau domaine. Dans un premier volume 'Chapters on international law' il réunit quelques

articles (1894). Puis, succédant à Sumner Maine dans la chaire de droit des gens (Whewell) de l'Université de Cambridge, il tire de son enseignement une étude systématique du droit international, en deux volumes : ' Peace ' (1904), ' War ' (1907), dont une seconde édition devait bientôt suivre. La générosité de son cœur, sa passion du droit l'amenèrent à prendre parti pour les faibles ou les opprimés, nationalités balkaniques ou peuple de Finlande. L'une de ses dernières études fut une note, pour le ' Recueil des arbitrages internationaux ' ; la dernière fut, à la suggestion de son ami J. B. Scott, l'édition du ' De iure et officiis bellicis ' de Ayala, pour la grande collection des classiques du droit international fondée par l'ingénieuse philanthropie de M. Carnegie. Membre de la Cour de la Haye au titre anglais de 1900 à 1906, il n'y fut jamais appelé comme arbitre ; pas davantage, il ne prit part aux Conférences de la Haye de 1899 et de 1907 : la politique a parfois de ces ingratitudes envers la science.

Nulle œuvre, en droit des gens, n'est plus caractéristique que celle de Westlake. Avant lui Phillimore, Hall, Twiss avaient été des jurisconsultes exposant pour l'usage anglais toutes les règles anglaises. Dans les deux volumes de son ' International Law,' Westlake ne prétend pas offrir, comme ses prédécesseurs, une vue encyclopédique du droit international, mais seulement une étude raisonnée des plus importantes questions, afin de mettre, non pas la seule jeunesse des Universités, mais le grand public en mesure

d'apprécier les discussions juridiques qui sans cesse se présentent à propos de la politique extérieure. Ainsi comprise, son œuvre est essentiellement une œuvre de principes, où la personnalité de l'auteur se projette d'autant plus fortement que, ne prétendant pas tout dire, il ne retiendra du droit des gens que les parties qui s'harmonisent avec le tour naturel de son esprit.

L'histoire et la philosophie s'unissent dans les fondements du droit international ; mais, si Westlake sait à fond l'histoire du droit des gens, s'il a lu Grotius et Vattel, Thomasius et Puffendorf, s'il connaît surtout admirablement l'histoire du droit de la guerre, ce qui lui permet, sur bien des points, de rectifier plus d'une erreur, notamment dans d'admirables pages sur l'histoire de la propriété privée dans la guerre maritime et l'histoire de la neutralité (2nd ed., t. II., p. 136 et suiv., p. 198 et suiv.), il n'a pas le goût de l'histoire pure. La condition des États perpétuellement neutres, l'équilibre, la doctrine de Monroe ne le retiennent guère. Au droit constitutionnel il laisse les unions et les fédérations, qui sans doute lui appartiennent, quand, union personnelle ou État fédéral, elles naissent de deux constitutions appelant à la couronne un même souverain ou d'une constitution groupant plusieurs royaumes ou républiques, mais qui cependant lui échappent, quand, unions réelles ou Confédérations d'État, elles naissent directement d'un traité. J. Westlake n'arrive donc pas au droit des gens en historien.

Pas davantage, il n'y vient en philosophe. Sans

doute, il s'est profondément instruit à l'école des théoriciens du droit de la nature, qu'il cite, notamment Grotius et Vattel, avec le plus grand soin et dont il reproduit la distinction des droits parfaits et des droits imparfaits (en matière de navigation des fleuves, d'extradition, d'extinction des traités) ; mais il n'est pas de ces esprits *a priori* qui construisent le droit des gens en toute liberté suivant leur seule conscience et leur seule raison. N'ayant, semble-t-il, que peu de goût pour la spéculation pure, il ne se donne pas un système arrêté, librement conçu à l'imitation des philosophes : ni Kant ni Fichte n'ont agi sur ce prudent disciple de Bentham.

Ce qui, dans le droit des gens, attire Westlake, ce n'est ni l'histoire ni la philosophie, mais le droit.

Comme tous ceux qui passent du droit international privé au droit international public, il y porte un esprit essentiellement réaliste. Mais, à la différence des auteurs qui l'avaient précédé en Angleterre, il ne se préoccupe pas seulement de savoir quelles sont, dans les plus importantes questions du droit international, les traditions anglaises. Les précédents politiques et jurisprudentiels ne suffisent pas à le satisfaire. Il leur demande leurs titres, devant la justice.

Également eloigné de la rêveuse utopie d'un Lorimer et de l'empirisme étroit de tant d'autres, Westlake cherche à construire un droit des gens qui, ne s'égarant pas dans les à-côtés de l'histoire et de la philosophie, reste profondément juridique, sans cesser d'être éminemment scientifique.

Quelles sont, pour lui, les sources du droit international ? La coutume, sans doute, mais surtout la raison : ' Les règles déjà considérées comme établies doivent être ramenées à leurs principes et ces principes étendus à de nouveaux cas par les méthodes du raisonnement propre à la jurisprudence, éclairées par une juste vue des nécessités de la vie internationale ' (t. I. p. 18). Tout en restant essentiellement un juriste, Westlake entend demeurer un penseur.

Mais ce penseur n'est pas un doctrinaire. Venu du droit international privé au droit international public, il reste, dans ce nouveau domaine, fidèle à la méthode analytique qu'il n'avait cessé de pratiquer dans l'ancien. Quand il écrivit, deux principes se disputaient la formation générale du droit des gens moderne : le principe classique de l'indépendance des États, particulièrement cher aux auteurs anglais ; le principe du respect des droits fondamentaux des États. Westlake est trop prudent pour prendre parti entre l'un et l'autre. Il a l'esprit trop juste pour ne pas voir que le dogme de l'indépendance des États ne peut servir de base au droit international moderne : aussi la doctrine de l'indépendance des États, si chère au droit des gens classique, ne lui convient-elle pas. Pourtant, la doctrine des droits fondamentaux des États, dont il suit l'histoire chez Thomasius (1705) et Wolf (1749) ne lui agrée pas davantage : ' Il y a place pour des droits fondamentaux de l'homme, comme la liberté

de la personne humaine, parceque, dans les États qui ont atteint le degré et pris la forme de la civilisation européenne, la nature des individus est si nettement déterminée que certaines règles de justice à eux relatives peuvent être considérées comme inébranlablement fixeés. Mais la nature des États a varié dans l'histoire et peut encore se modifier. L'évolution de la société est beaucoup plus prompte que l'évolution de l'homme. Donc les droits fondamentaux des États, à les supposer admis, n'auraient qu'un très relatif degré de stabilité ... L'État moderne n'est pas assez fixé pour qu'il soit sage de le revêtir de droits essentiels, au lieu d'*examiner chacune des questions qui le concernent en vue de lui donner une solution basée sur ses mérites particuliers.*'

Tandis que d'autres écrivains prennent, les uns dans l'indépendance, les autres dans l'interdépendance des États, le principe directeur de leurs opinions, Westlake considère donc chaque problème en soi.

De même qu'en droit international privé il se rattachait aux statutaires, en passant, comme Savigny, leurs doctrines au filtre de la raison, sans idée préconçue, sans préjugé territorial ou personnel, de même, en droit international public, il remonte à ses prédécesseurs, les écrivains du droit de la nature et des gens, en recherchant, sans préjugé tiré de l'indépendance ou de l'interdépendance des États, mais par l'analyse attentive du rapport de droit, ce qui, de leurs doctrines, mérite de subsister. La méthode, qu'il avait suivi dans son 'Conflict of Laws,'

le guide encore dans son ' International Law.' Qu'il s'agisse du droit au territoire ou de la succession d'État à État, de la liberté de la mer et des fleuves ou de l'extinction des traités, de la protection diplomatique ou de l'intervention, de la paix ou de la guerre, c'est toujours la même méthode : chercher, sans partipris, la justice. Et cette méthode donne à son œuvre un caractère de prudence raisonnée, qui n'appartient, à ce degré, qu'à lui.

Il ne se demande pas, comme tant d'autres, si telle ou telle règle anglaise a, pour elle, l'autorité des précédents anglais, mais celle de la raison.

Or la raison est de tous les pays.

De même qu'en droit privé son œuvre prenait jour sur les doctrines continentales, en droit public elle s'ouvre largement sur les perspectives du droit européen et américain.

Profondément dévoué aux grands intérêts de l'humanité et de la paix, son patriotisme éclairé n'avait pas tardé à se rendre compte que les intérêts de la Grande-Bretagne, d'abord fixés dans le développement des droits des belligérants, étaient, depuis la fin du xix^e^ siècle, passés dans le développement du droit des neutres : ' La puissance maritime de la Grande-Bretagne n'est plus actuellement hors de comparaison avec celle des combinaisons que les alliances peuvent former contre elle et sa politique a pris, de plus en plus, un caractère pacifique. Elle a gardé la neutralité dans la plupart des guerres maritimes de la seconde moitié du xix^e^ siècle,

notamment la guerre de sécession, la guerre hispano-américaine et la guerre russo-japonaise. Et, dans la guerre de l'Afrique du Sud elle a suscité l'unanime mécontentement des neutres, en exerçant des droits qui, jusqu'alors, avaient toujours été reconnus aux belligérants. En même temps le fer et le charbon, largement répandus dans le monde, ont remplacé les anciennes fournitures de la marine (goudron, chanvre) que, spéciales aux nations scandinaves, on pouvait, autrefois, tenter, par le développement des prises neutres, d'empêcher d'arriver aux belligérants, tandis que la densité des populations modernes rendait le commerce du blé et des matières premières du travail des manufactures, nécessaires à son salaire et à sa vie, d'une nouvelle importance même pour les belligérants et particulièrement pour la Grande-Bretagne.' 'Ce serait,' disait-il, 'une erreur d'identifier les intérêts de la Grande-Bretagne ou même d'une autre grande puissance avec les intérêts speciaux soit des neutres soit des belligérants.' Devant la grande commission pour le ravitaillement de l'Angleterre en temps de guerre, John Westlake insista vivement pour que l'Angleterre abandonnât certaines règles, trop étroites, de son droit : la prohibition du convoi, le développement de la contrebande de guerre. Il n'estimait pas que l'autorité de lord Stowell et de Lushington s'opposât à la destruction des prises neutres. Il se souvenait que, dès 1862, dans son étude 'On commercial blockades,' il avait demandé, sous l'influence de vues américaines, la suppression complète du

blocus commercial ; et, sans doute, il avait, depuis, renié la chimérique intransigeance de cet essai de jeunesse, mais il ne pouvait cependant avoir changé de tendances et le resserrement des effets du blocus dans le rayon d'action des forces bloquantes était le seule formule qui reconciliât son désir de réforme avec son souci marqué de réalisme et de prudence. Sans admettre le principe de l'insaisissabilité de la propriété privée ennemie sous pavillon ennemi, auquel il devait toujours refuser son adhésion, il avait, à la fin de sa carrière, suivi, en matière de neutralité, les idées anglaises jusqu'au terme de leur évolution. Quand la Déclaration de Londres de 1909 vint opérer la conciliation des idées anglaises et des idées françaises, dans le droit de la neutralité maritime, il écrivit pour la défendre, en mars 1910, dans le *Nineteenth Century*, un article qui peut être considéré comme son testament juridique ; et lorsque, la Chambre des Lords, mal renseignée sur les avantages de la Déclaration, lui refusa l'assentiment que la Couronne, renonçant à sa prérogative, lui avait expressément demandé, Westlake en conçut une mélancolie profonde.

* * * * * *

Ainsi, tant dans le droit privé que dans le droit public, Westlake aura cherché, sous l'influence de la raison, à rapprocher—dans l'intérêt même de sa patrie—le droit anglais du droit continental, non que l'un doive s'imposer à l'autre, mais parceque tous deux

doivent également s'incliner devant les principes supérieurs de la raison, qui est la même pour tous. Profondément nourri de science juridique, versé—plus qu'on ne l'est généralement en Angleterre—dans la connaissance du droit romain, il a, plus qu'aucun autre Anglais, travaillé pour la science universelle.

* * * * * *

Quelque différence qu'il y ait entre le droit international anglais et le droit international européen, quoique, de l'un à l'autre, il y ait opposition de tempérament, de méthode et de tendances, il n'en est pas moins certain que, par une étude commune de leurs principes, les deux droits cherchent à se connaître et, s'étant compris, à se concilier. Le droit international ne saurait être individualisé—il est général ; ses conceptions nationales ne sont que les premières formes, instinctives et tâtonnantes, d'une conception plus haute, unanime, qui, lentement cherche à se constituer. Westlake, bien qu'Anglais, eut cette conception, vraiment internationale, d'un droit qui trop souvent ne mérite pas le nom qu'il prend. Esprit d'une haute culture, il sut, avec une grande largeur de vues, faire penétrer dans sa pensée l'idée non britannique, et, par là même, il put, mieux que tout autre, amener les jurisconsultes du Continent, particulièrement les Français, à mieux comprendre l'esprit anglais et les solutions anglaises, et les Anglais à mieux connaître l'idée européenne, notamment l'idée française.

D'autres jurisconsultes de la Grande-Bretagne auront été plus exclusivement britanniques. Sans cesser d'être Anglais, il s'est suffisamment approché des idées continentales et particulièrement des idées françaises pour que ce soit par lui qu'actuellement, en droit international, la France communique avec l'Angleterre.

Les amis français de Westlake éprouvent une pieuse gratitude à penser qu'entre les deux nations son œuvre demeure, après lui, comme un trait d'union.

A. DE LAPRADELLE.

VI

JOHN WESTLAKE AS TEACHER

It is somewhat difficult for me to write, as I am asked to do, an appreciation of Westlake as a professor of law, because it was only in the last years of his long activity that I had the happiness of knowing him, and I attended his course at Cambridge for but a single term. Yet, of all my teachers, there is none who made a deeper impression. His abiding influence came, not so much from what he taught, as from the point of view which his personality impressed. His were the first lectures I heard in any branch of law: and from them I gained the conviction, which could not have been obtained so clearly from any other source, that law, while being an exact science, was intimately concerned with the maintenance and the extension of just dealing between individuals and between nations. And he himself seemed to realise Ulpian's conception of jurisprudence as 'the knowledge of things human and divine, the science of the just and the unjust.' As a lecturer, Westlake, with his dignified presence, his

transparent knowledge, and his enthusiastic expression of it, which would at times illuminate his face, could not fail to be impressive. I have heard it said that he was not an effective teacher for the ordinary candidate for the Law or History tripos, who regards international law as a minor subject, and who wants an elementary and easy treatment of it. It may well be that his constant habit of close reasoning and his concise statement appealed to the serious, but appalled the superficial student. But as a lecturer he was certainly lucid, provided that his hearers were willing to do their part, and concentrate their minds as he manifestly concentrated his. Mr. Roland Burrows of the Inner Temple, to whom I owe several vivid memories of Westlake, writes to me that: 'One clue as to the direction of his remarks was always given. When he was coming to the *crux* of an argument, he began to move his eyebrows up and down, and he would conclude on the last word with a vigorous dive of his chin. It is difficult to describe; but one felt it was conclusive. One might deny his premises; but short of that he was unanswerable.' His lectures were a revelation of reason informing and illuminating facts: a legal philosophy teaching by examples.

Outside his class-room, he was the most helpful and approachable of professors. Besides one afternoon in each week which he gave up to receiving his Cambridge pupils, he was always ready to advise

any students, and to place at their disposal the wealth of his learning. The point which he most regularly emphasised in his advice was the need for conciseness and accuracy of statement. A certain vagueness of thought and looseness of language affected the treatment by English writers of both branches of the subject which he taught, till he approached their elucidation; and it was, perhaps, due to his early training at Cambridge, as well as to his mastery of foreign legal literature, that he was insistent on a change in these respects and succeeded in accomplishing it. It is a striking fact that neither of the most distinguished teachers of law at Cambridge of recent times read law when they were undergraduates. Maitland took a high place in the tripos of Mental and Moral Science, and all but obtained a fellowship in that subject. Westlake was sixth both in the classical and mathematical tripos, and was elected to a Trinity fellowship before he was more than a novice in the law. The broad training which they received before they came to legal studies was apparent in their work. Maitland's writings are distinguished by a philosophical grasp which is rare among our legal historians; Westlake's by an accuracy of thought and an appreciation of the value of words which are rare among writers on international law.

He would uphold stoutly the value of a classical or a mathematical training for those who intended to adopt the profession of law; and he was

punctilious about correctness in Latin quotations in legal literature. He reproved, for example, a student who quoted Bynkershoek in such a truncated way as to make it appear that the Dutch jurist did not write grammatical Latin. What further distinguished Westlake among jurists, as it distinguished Maitland among legal historians, was that he came to legal writing from the practice of law, and brought to his subject the trained judicial mind. As well in his treatment of public as of private international law, he introduced the habit of a close analysis of cases, and thus contrived to invest those subjects with something of the same precision as is appropriate to other branches of jurisprudence. At the same time, he was a master of the theory and the history of the 'Jus Gentium,' and a profound student of foreign systems. He brought thus to his work excellences characteristically English and characteristically un-English: on the one hand the positive definite tendency, on the other the grasp of general ideas and the appreciation of historical causes. He emphasised on his students the need of reading foreign literature about international law, while warning them against the danger of being carried away too far by doctrine. His essentially judicial mind was shown in the care with which he reached a definite conclusion about a disputed point, and in his certainty when he had reached it. It was shown, too, in his reticence in publishing his general views on public international law, which, by its nature, is a constantly

developing science. It was not till 1894 that he issued his first book on that subject, the 'Chapters on the Principles of International Law'; and it was ten years later, when he had passed his seventieth year, that he brought out his complete treatise in two volumes. He disliked intensely the prolixity into which publicists are easily tempted; and if, to the casual reader, he may occasionally seem to carry conciseness to the point of obscurity, his style, both in his writings and his lectures, was a salutary example to every serious student. To a candidate for a Whewell scholarship, who started an answer with the words 'this interesting problem,' he complained that it was unnecessary verbiage which wasted both the candidate's and the examiner's time. It may seem strange to those who find him difficult to read that he regarded Addison as the best model for English composition. The nature of his matter and his love of conciseness make his masterly treatise on 'Private International Law' no easy book; but in his 'Principles of International Law' and in many of his occasional articles he is as lucid as he is authoritative. Every page of his works shows scrupulous care and mature reflection, and to his last years, when he was physically weak and moved with effort, he could be seen at Lincoln's Inn Library correcting any statement affected by recent events, and looking out every reference for a new edition of his works at which he was working to the end.

As to the manner in which he regarded the public responsibility of his professorship, others more competent will have written in this volume. But no undergraduate could attend his lectures or consult him without obtaining the idea that it was the particular function of the international lawyer to find a practical solution for the problems of international relations as they arose, and to mould public opinion towards progress. He used to tell his students that one of the chief things necessary for them was to read carefully the foreign news of *The Times*; and in a notable passage in the preface to his 'Principles of International Law,' which illustrates at once his thought and his expression, he wrote: 'To prepare men for the duties of citizenship is the chief justification for introducing into education a subject which, on account of its inevitable defect in precision, is less suited as a training for the mind than as an exercise for the trained mind.' He seemed to be *viva vox juris gentium*—the living voice of the law of nations: and here pre-eminently, in the treatment of present-day problems, he stood out as the master of the science of the just and the unjust. International law, as he interpreted it, laid down one rule for all states: and he would always protest against the application of a different canon of conduct to the greater and the minor powers.

The founder of the professorship which he filled directed the holder of the chair 'to make it his aim

in all parts of the subject to lay down such rules and to suggest such measures as may tend to diminish war and finally to extinguish war between nations.' Westlake fulfilled this direction with exemplary thoroughness and an equal clearness of perception. From the days of the *Alabama* controversy, he was a fearless and untiring advocate of international arbitration. Yet he recognised and expounded the limits which were set to its operation. As one of the leading members of the Institut de Droit International and as one of the founders of the 'Revue de Droit International,' he took a prominent part in moulding the juristic and the general opinion of Europe, which led to the international conventions for mitigating the horrors of war and securing the rights of neutrals. And more particularly in his own country, by letters to the Press, he continually guided public opinion and corrected its errors upon matters of mixed legal and political interest. His contribution two years ago to the discussion on the Declaration of London, probably the most weighty plea uttered in support of that instrument, was the latest example of this side of his activity.

But it would be giving again a one-sided view of Westlake to consider him exclusively as the professor and the publicist. What, I think, most struck a student when he came to know him was his enthusiasm for every liberal cause and the unswerving progressiveness and freshness of his mind. In the eagerness of his sympathies, he surpassed the

most youthful of us. He who had been a radical thinker with John Stuart Mill and Frederick Maurice and Fawcett remained a leader of radical thought in the twentieth century. I have heard him described as an old-fashioned Liberal, but that, I think, is a superficial judgment. True, he had that affection for individualistic principles and that freedom from all racial and religious prejudice, which marked the radicals of a former generation: and he would insist on the need for the teaching of those principles to-day when every political canon was questioned. True, too, that he distrusted some of the practical measures which are advanced by present-day reformers, and that he was uneasy about certain projected changes. But, at the same time, his mind to the end remained open to new ideas, and his enthusiasm for the advance of democracy was ever fresh. He appeared to combine the virtues of the old and the new Radicalism; the hold on first principles of the one, the eager prosecution of large changes in society of the other. I came to know him only when he was nearing his eightieth year, an age when a man's outlook tends to conservatism; yet he always was on the side of progress, his trust in humanity was never impaired. He was possessed by a reasoned passion for righteousness and justice between man and man and between people and people. That was the dominating idea of his own life and the dominating feature of his influence upon his students and those who were

privileged to associate with him. It was that attitude which made him one of the founders of the Working Men's College, a protagonist for Electoral and Suffrage Reform, president of the Balkan Committee, and the advocate of every oppressed nationality.

Westlake had not the qualities which make a popular leader of democracy; his aversion to rhetoric or any direct appeal to the emotions restricted the range of his influence. He must have been a singular candidate for Parliament. Mr. Burrows tells me that a former constituent of Westlake's declared that his speeches in the Romford division, which he represented for a short period, were lectures on current affairs of the highest possible importance, which, however, were apt to weary the audience. As Westlake's Cambridge course was not fitted for the idle student, so his electoral speeches were not fitted for the ordinary elector. But to those who were in closer contact with him, his combination of calm reasoning with enthusiasm for right and faith in human progress were peculiarly stimulating.

Lastly, I may be allowed to add a personal note. To those students who showed a serious interest in international law, Westlake was much more than a professor and a director of studies. His home, either in Cambridge or in London, to which his wife, who shared his every interest, gave an extraordinary charm, was open to them whenever they desired to consult or converse with him, and he was never too busy to write, and write fully, on

any point upon which they applied to him. While frank in his criticism, he was singularly generous, not only in his appreciation of any honest work by a disciple, but in giving his aid to improve it. When, some few years since, a Cambridge prize essay was set on a subject pertaining to international law, and he was one of the adjudicators, he devoted many an hour to help the author of the successful essay to prepare his work for publication; and for another competitor who also published his essay, he wrote a chapter on the 'Capture of Enemy's Property at Sea,' which is of permanent value. Though in his later years he was troubled with deafness, he rose superior to the infirmity by strength of will, and he would contrive with perfect courtesy to listen to any suggestion which was made to him by any present or past pupil, and would give his opinion in that precise language which in conversation as in writing distinguished him. And over his talk there reigned that inspiring enthusiasm for the cause of national and international justice which is the most precious heritage of his teaching.

NORMAN BENTWICH.

VII

EXTRAITS

DE LA

NOTICE CONSACRÉE À JOHN WESTLAKE

DANS LA 'REVUE DE DROIT INTERNATIONAL ET DE LÉGISLATION COMPARÉE'

PAR M. ED. ROLIN-JAEQUEMYNS, RÉDACTEUR EN CHEF.

JOHN WESTLAKE, qui fut, en 1869, avec T.-M.-C. Asser et Rolin-Jaequemyns, un des fondateurs de la 'Revue de droit international et de législation comparée,' est décédé à Londres, le 14 avril 1913.

Jusqu'à son dernier jour, sa science et son autorité, hautement appréciées en tous pays, furent pour nous un appui sûr et un guide précieux, que son inaltérable bienveillance nous permettait de mettre sans cesse à contribution. Aussi, nulle part, la douleur de cette mort ne sera-t-elle ressentie plus profondément qu'au sein de notre Comité de rédaction.

John Westlake fut, paraît-il, un enfant exceptionnellement précoce, mais de santé délicate, ce qui ne

l'a pas empêché de vivre jusqu'à l'âge de 85 ans dans un état physique satisfaisant et dans toute la plénitude de son intelligence et même de son activité intellectuelle. Il le dut sans doute à la discipline d'une vie particulièrement sobre et réglée, dénuée du reste d'agitations extérieures, et aussi aux soins d'une épouse admirable. . . .

Dès ses débuts comme avocat, en 1858, Westlake publiait un premier traité de droit international privé, qui fut du reste entièrement refait et refondu dans le livre qu'il écrivit sur le même sujet en 1880, sous le nom de deuxième édition. Le premier ouvrage n'en fut pas moins le fondement de sa situation au barreau et lui valut une grande réputation à une époque où l'étude du droit international privé et du conflit des lois était moins approfondie qu'elle le fut par la suite. . . .

Il y eut une troisième édition de cet important ouvrage en 1890, une quatrième édition, avec quelques développements nouveaux, en 1905 et une autre encore en 1911, ce qui prouve à quel point l'œuvre de Westlake a conservé toute son autorité, bien que d'autres jurisconsultes l'aient suivi depuis lors dans cette voie qu'il avait été le premier à tracer en Angleterre.

C'est tout naturellement et petit à petit, par des monographies d'abord, que ses études passèrent du droit international privé au droit international public. La transition se fit d'autant plus aisément qu'il avait d'emblée considéré cette première discipline

dans ses relations avec l'autre. Nous reconnaissons cette évolution dans sa collaboration à la 'Revue de droit international,' qui fut très active à certains moments et aussi dans sa participation aux travaux de 'l'Institut de droit international' dont il avait été un des fondateurs et dont il fut nommé en 1910 président d'honneur.

L'évolution à laquelle nous venons de faire allusion se trouva évidemment activée par la nomination de M. Westlake, en 1888, à la chaire de droit international (fondation 'Whewell') de l'Université de Cambridge. Il y succédait à sir Henry Sumner Maine, bien connu par ses remarquables travaux sur l'histoire du droit et les institutions sociales, mais qui n'occupa que peu de temps la chaire fondée en 1866 par le Dr Whewell et dont le précédent et premier titulaire avait été sir William Vernon Harcourt. Ce fut Westlake qui, pendant ses vingt années de professorat (1888–1908), mit vraiment en relief l'enseignement du droit des gens à Cambridge et lui donna en quelque sorte sa marque. Cette 'Revue' a eu l'honneur de publier sa leçon d'ouverture où l'on reconnaît son esprit précis et positif; et, dès 1894, paraissait un premier ouvrage se rattachant à son enseignement, sous le simple titre de 'Chapters of international law,' bientôt suivi de son 'Droit international,' en deux volumes, l'un pour la Paix (1904), l'autre pour la Guerre (1907). . . .

Notre éminent collègue, M. Nys, rendait compte

ici même, il y a quelques mois, de la dernière contribution de Westlake à la science du droit des gens. C'est tout récemment en effet qu'a paru, comme deuxième volume de la collection 'The classics of international law,' éditée par les soins de M. James Brown Scott, l'ouvrage de Balthasar de Ayala : 'De jure et officiis bellicis et disciplinâ militari, libri tres,' dont Westlake, avec un zèle infatigable, dirigea la publication en l'accompagnant d'une notice très développée sur l'auteur.

De 1900 à 1906, Westlake fut un des membres désignés par le gouvernement de la Grande-Bretagne à la Cour d'arbitrage de la Haye. Il avait du reste eu, quelques années auparavant, en matière d'arbitrage, un geste tout spontané dont il était fier à bon droit, car c'est peut-être son initiative opportune qui évita à ce moment une guerre entre l'Angleterre et les États-Unis d'Amérique. Il s'agissait d'un conflit assez aigu relatif aux frontières de Vénézuéla et de la Guyane anglaise et un message, adressé au Congrès des États-Unis par le président Cleveland, avait éveillé toutes les susceptibilités britanniques. C'est à ce moment que, dans une lettre adressée au *Times* le 6 janvier 1896, Westlake suggéra une formule mixte d'arbitrage et de médiation qui ne tarda pas à être prise en considération et qui fut à peu près littéralement transcrite dans le traité d'arbitrage anglo-vénézuélien, en date du 2 février 1897, qui mit fin au conflit.

Quelques années plus tard, en 1902, il était

consulté, à la fois au nom de la Suède et au nom de la Norvège, à propos des effets d'une déclaration unilatérale de neutralité.

Cet homme de cabinet, de premier abord extrêmement doux, fut néanmoins toute sa vie un ardent lutteur, très indépendant d'idées, capable de fortes convictions et prenant feu et flamme pour les défendre. Sans être positivement éloquente, sa parole, non seulement dans sa langue propre, mais même en français, était persuasive à force de clarté et de profonde conviction. Dans la première partie de sa vie d'homme, il la mit au service des causes de ses clients. Plus tard, quand il eut abandonné le barreau, il conserva ce tempérament du bon avocat qui aime à prendre en mains une cause juste. C'est ainsi qu'il se fit le défenseur de la Finlande, dont les droits historiques étaient méconnus. D'autre part, après avoir été un moment séduit par les espérances que firent naître les jeunes Turcs, il s'attacha plus fermement que jamais à la cause des populations des Balkans. Les succès des États alliés contre la Turquie furent pour lui un sujet de vive satisfaction durant les derniers temps de sa vie et, lorsque les premières tentatives de négociations pour la paix amenèrent à Londres les délégués de ces États, il tint à se rencontrer avec eux.

Jusqu'à la veille de sa mort et dans un corps plutôt débile, la forte intelligence de Westlake avait conservé non seulement toute sa lucidité, mais également sa vigueur première. Aussi, en apprenant

son décès, l'impression de tous ceux qui le connaissaient a-t-elle été aussi cruelle, malgré son âge avancé, que celle que nous inspire la disparition d'un homme frappé dans toute sa force et dont on attend encore beaucoup. . . .

ED. ROLIN-JAEQUEMYNS.

VIII

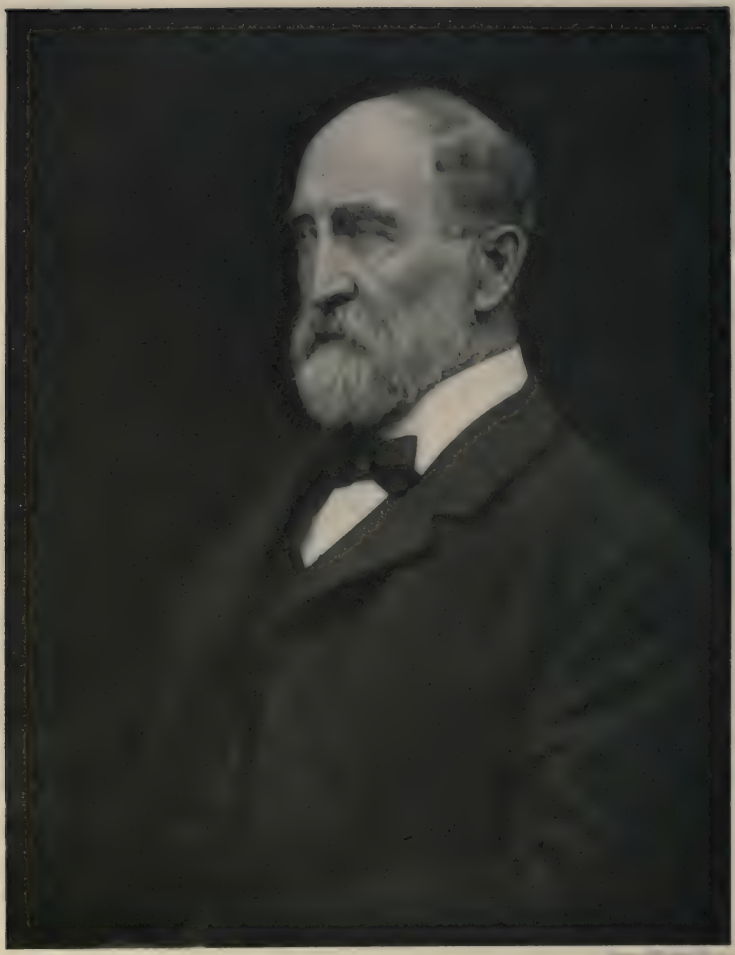
THE BALKAN COMMITTEE 1905–1913

When Mr. James Bryce, who had been president of the Balkan Committee from its inception in 1903, accepted office in the Liberal Cabinet formed by Sir Henry Campbell-Bannerman at the end of 1905, he resigned the presidency of the committee, and Mr. Westlake was at once and unanimously chosen as his successor. In their first president, the committee had enjoyed the advantage of having a man who was a distinguished scholar, who had made a special study of foreign affairs, who was a fluent speaker, a cultivated writer, and a recognised authority on international law. It was their good fortune to obtain as his successor a man possessed of all these qualities, and whose reputation as an authority on international law added weight and importance to the opinions and acts of the committee, and secured for them attention, both at home and abroad, which otherwise they might not have obtained.

There were two criticisms to which the committee were especially liable at that time:

1. It was said that they were an irresponsible body, with no special knowledge of the past history or present conditions of the Balkan countries, such as would entitle them to claim authority for their opinions; that they were blinded by racial and religious prejudice against the Turks; and that they were 'sentimentalists.' To such a criticism, Mr. Westlake's close association with the committee and its work was a sufficient answer. No one who knew him, whether personally or by repute, could charge him with speaking or acting without knowledge and study of his subject, or could accuse him of prejudice or 'sentimental' weakness. Not only did his sane judgment preserve the deliberations of the committee from the danger of such faults, but his reputation was a guarantee that the manifestos and other documents issued by them, with his signature attached, were well considered and based on knowledge and experience.

2. The second criticism was more difficult to deal with. Apart from the strong Turcophil sentiment that had prevailed in this country ever since the Crimean War, and which the influence of Lord Beaconsfield had made almost a tradition of his party after the Treaty of Berlin, there was a large section of politicians who objected to any interference on our part with the internal affairs of other nations. 'What right,' they asked, 'have Englishmen to meddle with the administration of the



John Westlake

from a photograph by Frederick Hollyer in 1910

Macedonian provinces of Turkey—an independent sovereign Power of Europe—so long as it does not affect British interests? Deplore as much as you like the miseries which those poor Macedonians are suffering. Express, if you like, your detestation of the cruelties perpetrated on them by Turkish officials. Liberate your own souls, if it pleases you, in memorials and manifestos. But don't try to make the British Government or the Governments of the other Powers prevent the Porte from governing its subjects as it likes. It would be quixotic to do so, and such interference would be a violation of the principles of international law.'

Here was a criticism with which no member of the executive committee had the requisite knowledge to deal, or the authority which would render the reply, if attempted by any of them, adequate and conclusive. Never was the great value of Mr. Westlake's work for the Balkan Committee more strongly manifested than in the clear and trenchant answer given by him in his article in the *Nineteenth Century* of December 1906, entitled 'The Balkan Question and International Law.'

'The restoration of the Macedonian vilayets to Turkey was the work of the Powers at the Congress of Berlin. That restoration was the title by which the Sultan held that region, his international title as sovereign was created by the restoration and existed only as moulded by its terms, and not only the authority of the Sultan himself but the right

of the Powers to demand the observance of stipulations made on behalf of the Christians were the creation of the Treaty of Berlin. There were also specific provisions therein—especially those embodied in Articles XXIII, LXI, and LXII—which showed not only that the Powers would take cognisance of Ottoman misgovernment in Macedonia and other parts of Turkey, but that the Sultan submitted to their doing so. Moreover, on the broad principles of international law, the independence of any State must be limited by the necessary protection of its fellows against injury and nuisance, and it could not plausibly be denied that "extreme misgovernment in Turkey was a nuisance to the neighbouring States." To the allegation that much of the nuisance was caused by outrages committed on each other by Bulgars, Greeks, and Vlacks, the answer was that "if the Sultan could not keep order in his own dominions, or if to keep order he had recourse not to civilised means of repression but massacre, he lost all claim to be regarded as a ruler to whom international law could apply." The justification of the intervention of England was based on the necessity of the maintenance of the European Concert—a matter of vital importance to a nation that "has so much at stake as England has in all parts of the earth." As international law could only exist in a society possessing some degree of stability, it gave to all the European Powers, even the most remote from Turkey, the right to intervene in the concerns

of any member of the society who threatened that stability. Lastly, the Powers had already intervened, and rightly intervened, in the affairs of Turkey, by the Treaty of Berlin, by the Vienna and Mürzsteg schemes, and by the Financial Commission, all of which were "justified by any sane view of international law"; and England had the right to try and induce the other Powers to join in enforcing upon Turkey the fulfilment of the stipulations laid down in those documents.'

This authoritative vindication of their action greatly strengthened the hands of the Balkan Committee at a time when it appeared as if the British Foreign Office was inclined to adopt a non-intervention policy towards Turkey, and was being supported in that attitude by a large section of the public and the press. Roused by the fear lest the *vis inertiæ* of the Government should prevail, the committee entered on a vigorous propaganda of their views by deputations to the Foreign Secretary, interviews with ambassadors, letters in the newspapers, and public meetings, and in many of these activities Mr. Westlake, in spite of his advanced age, took a personal part. By letters to *The Times* and other journals, by speeches on deputations and at public meetings—one of which was held so far away as at Manchester—he led and encouraged the committee by his courage and devotion and wise counsel. It is noteworthy that though his letters must have been read by thousands, not one of them

was ever challenged or answered—a strong proof of their clear and convincing character. But even more remarkable was the effect of his speeches, which were delivered without a note, with rapid but clear utterance, and were spoken as if, in their occasional pauses, he was thinking out his subject and reading in his own mind the facts and arguments deduced from them which he placed before his audience. His manner of delivery conveyed the impression that he was thinking aloud rather than speaking to others, and the confident certainty of his pronouncements impressed his hearers with the feeling that he not only knew the subject about which he was speaking *au fond*, but that his knowledge of it was so full and so accurate that his judgments and conclusions must be right. Not that he was dogmatic or oracular, or spoke as if *ex cathedra*. He was essentially the Baconian 'full man' of reading and study, who had thought out his subject, and examined it thoroughly, and had formed his conclusions after ample and careful examination of all its pros and cons, and had satisfied himself that those conclusions squared with the facts and were therefore right. Even to those who disagreed with his views this was the impression which his speeches conveyed, while to those who agreed with him his clear and lucid expositions added confidence and strength to their opinions.

At the meetings of the Committee, which he attended very regularly during the earlier years of

his Presidency, and with more regularity than many of the members up to within a fortnight of his death, Mr. Westlake as a rule concentrated his opinions and advice into one or two short speeches, in which he dealt with the views put forward by others; but, while giving fair consideration to these, he spoke always as if he had already carefully and fully thought out the subjects under discussion and had made up his mind upon them. When, however, he failed to carry the Committee with him, he loyally accepted the decisions of the majority and manifested no vexation at defeat. He was present at every annual meeting, and though, because of his deafness, he usually declined to preside, and always most courteously yielded to any prominent or specially invited visitor the leading part to which his presidency entitled him, he never failed to deliver a weighty and interesting address specially prepared and adapted for the occasion. On all occasions—whether at committee meetings or annual meetings, or on deputations, or at public gatherings, his colleagues felt secure that he would say the right thing in the right way, and that he never needed to be asked to take some particular line so as to bring his views into accordance with the policy of the Committee. They knew that he had kept in close touch with the movement, was fully acquainted with all its latest details, and was inspired with the same spirit that animated them. It is a sort of tradition that presidents are mainly 'ornamental' officials, expected only to

preside on special occasions like annual gatherings, and not to be bothered to attend committee meetings or take any active part in the regular work and routine of their organisations. But Mr. Westlake, though he never claimed to impose his views on the committee, or to take the place of the chairman, or to dictate to the secretary or other officials a policy of his own, took no perfunctory view of his duty and responsibility as president, but worked with his colleagues and the committee loyally and with whole-hearted zeal for the cause.

As a member of the Balkan Committee from its early days, and as its secretary during the last three years, I may be permitted to add a personal touch to the portrait I have attempted to draw of our late president. The meetings of the committee were always held during the session of Parliament in one of the committee rooms of the House of Commons, access to which is obtained through St. Stephen's Hall and the central lobby and then up a long flight of stairs. To even young and strong men this walk was a trial; how much more trying was it for a man of Mr. Westlake's age and weakness! The last letter I received from him was written to excuse his non-attendance at a committee meeting, held only a week before his death, because he dared not risk 'those stairs.' I used to watch for his arrival when there was to be a committee meeting, so as to help him up and down the stairs, and we would sometimes stop and sit on one of the seats

to break the journey. Two years ago I had had a serious illness, which made me a rather weak and inefficient help to him, and I was struck by the unselfish solicitude he showed for my welfare at that time. Kindliness and courtesy were salient features in his character. He hated injustice and oppression from his very soul, and none who ever heard him speak against them could forget the burning and impassioned words in which he arraigned the tyrant and pleaded for the victims of tyranny. In my memory he will live as a man in whom the righteous fervour of the Crusader was blended with the kindly graces of the gentleman.

ARTHUR G. SYMONDS.

IX

FINLAND

Mr. Westlake's interest in Finland came to him, as far as I am aware, comparatively late in life. With his extensive knowledge of the legal and political institutions of foreign countries he had mastered at least the broad outlines of the political status of the Grand Duchy of Finland within the Russian Empire, but it was not until the ancient constitution of that country, in 1899, was threatened with destruction that he set himself to inquire more fully into this question. His sense of justice, his love of political freedom, and his zeal for constitutional government attracted his keen attention to the case of Finland, when these principles were being impaired, and the interest thus awakened in him continued unflagging until the last days of his life.

In an article published in the March number, 1900, of the *National Review*, on 'The Case of Finland,' Professor Westlake describes the grounds on which he finds the cause of Finland must attract attention in England. He writes there :

'The cause of Finland has excited deep interest in England for two reasons. First, nothing can be more opposed to English habits of action in our Empire than the Russian policy of forcing all the populations subject to the Tsar into one type of language, religion, and institutions. Whether the language to be discouraged is Polish, German, Lettish, Swedish, or Finnish; whether the religion to be strangled is the Roman Catholic or the Lutheran, and whether the institutions to be wiped out more or less nearly resemble our own, the nation which has allowed free scope to the French element in Canada, and to the Dutch element in the Cape Colony and Natal, must always sympathise with the type which asks nothing more than the chance of maintaining itself in a fair field without favour. Nor does it count for nothing in our sympathy that the type which struggles for existence is Western, while that which seeks to extirpate it belongs to Eastern Christendom. I hope that I am far from underrating the latter. Russians have been among my valued friends, and even without personal knowledge of them only a narrow mind could doubt that Eastern Christendom must have its contribution to make to the more perfect Europe of the future. But in building up that Europe our part is that of Western men, and when other Western men, from Poles to German colonists on the Volga, find themselves met by superior force instead of by healthy rivalry, that blood is thicker than water

will be found true of moral as well as of physical affinities.

'The other reason for English sympathy with Finland is that there a constitutional liberty is at stake. It will be interesting to many if, instead of reading mere denunciations, they are accurately informed how that liberty agrees with and how it differs from ours, how it is attacked and how it is defended.'

This article, which, in that lucid manner which is so characteristic of all that Professor Westlake wrote, placed before the readers the constitutional position of Finland and the character of the Russian aggression, at that time, was not the first token of his sympathies for that country and its people in their uneven struggle with their powerful neighbours. I may here mention that Mr. Westlake not only appended his signature to the international address which, in 1899, on an initiative taken by Professor Eucken, of Jena, was prepared for presentation to the Tsar on behalf of his Finnish subjects, but also took an active part in promoting the address and collecting signatures of other influential men in England; his name appears on the same page as those of Lord Courtney of Penwith (then Mr. Leonard Courtney) and Sir John Brunner.

The address—which counted over a thousand signatures from nearly every country in Europe—was to be presented to the Tsar in June 1899 by a delegation

of important men representing various nationalities. It was headed by Senator Trarieux of Paris, and counted among its members the late Baron Nordenskiöld, the famous Arctic explorer, and one of Professor Westlake's colleagues at the Institut de Droit international, the late Professor E. Brusa of Turin. Mr. Westlake agreed to be a member of the delegation, but was prevented from going to St. Petersburg, as he was then engaged in writing an important memorandum on the Venezuela arbitration question.

In the subsequent years of profound grief for all Finlanders which coincide with the late General Bobrikoff's tenure of office as Governor-General for Finland, Mr. Westlake found several occasions to point out, in letters published in *The Times*, the illegal and unconstitutional acts which so richly characterise the policy carried out by General Bobrikoff and the late M. de Plehve in Finland during this period. His letters were always based on facts and to the point, and they bear the character of cold reasoning, as befits a public discussion on legal and political matters. But his heart was in this work, as appears from his letters to his Finnish friends, with whom he suffered over the destruction of their constitutional liberties, and the persecution to which many of them were subjected. Therefore, when in November 1905 the Tsar signed a manifesto concerning the 'restitution of legal order in Finland' and repealing most of the many illegal

ordinances issued in previous years Mr. Westlake rejoiced in what he firmly believed to be the bright future in Finland, and he was not late in expressing his joy. In a letter of November 12 he writes :

'I must send you a line of most hearty congratulation, in which my wife joins, on the restoration of the constitution of Finland. It lifts from our hearts what has really been a weight on them. In quiet perseverance, and in readily seizing the right moment for action, you Finlanders have set an example by which other peoples may profit, besides gaining a lasting name for yourselves in the history of constitutional government. The proof of the moral qualities instilled by the long practice of constitutional government can scarcely fail to strike even your late oppressors.'

Among the events that now followed in Finland there was probably nothing that gratified Mr. Westlake more than the introduction in the parliamentary elections of the Grand Duchy of a proportional system of voting. Well knowing his zeal for proportional representation, I had given him an account of the results of the first election in 1907 under the new system, and he writes in reply on August 2, 1907 :

'I have to thank you warmly for your full account of the Finland election. It gave the greatest pleasure to all the friends of proportional representation, especially by reason of the small number of spoilt voting papers. In [the province of] Nyland that

number, having regard to the great many candidates and places, seems almost miraculous, and bears a high testimony to the intelligence of the people and the political zeal which must have been the root of such painstaking carefulness.'

Nobody can blame Mr. Westlake for entertaining the optimistic views expressed in the first letter. They were at that time widely shared in Finland and elsewhere. It could not occur to Mr. Westlake, nor could he reconcile with his own high standard of righteousness and good faith, that the November manifesto, which, to quote from its preamble, aimed at 'the development of the rights belonging to the Finnish people according to the fundamental laws,' would mark only a passing phase in the Russo-Finnish relations. After reading in *The Times* an account of certain measures foreboding a return to the régime of Russification, Professor Westlake writes in a letter of July 9, in a markedly pessimistic vein:

'It seems that all that Finland can hope for with any prospect of success is that (1) the subjects of common importance to her and Russia should be fairly defined with the concurrence of the Finnish Parliament; (2) that in all things not so defined as common, Finland should enjoy full autonomy; (3) that a fair method of dealing with the things defined as common should be laid down; again with the concurrence of the Finnish Parliament. Would it not be possible for the patriots of Finland to join with the more or less Liberal parties in the

Duma, to frame a plan for those objects and secure them? If a plan were so formed, I am sure that public opinion in this and other free countries would lend powerful help towards securing it.'

Mr. Westlake's pessimism turned out to be more justified than his previous optimism. It soon appeared that fresh measures were to be taken to deprive the Finnish Diet of its legal and constitutional right to legislate for the country, and it became known that a great number of legislative questions, practically all those of great importance, would be withdrawn from the competence of the Finnish Diet and in the future be dealt with by way of 'Imperial Legislation,' *i.e.* by the Russian legislature. It was also intimated that this change—which really amounted to a return to the time preceding the November manifesto—was to be brought about, not as Mr. Westlake suggests in the letter just quoted, with the concurrence of the Finnish Parliament, but by a one-sided act of the Russian Duma and State Council. News of this attack on the rights of Finland was spread all over Europe, and called forth in Germany and Austria a collective declaration on the part of jurisconsults, savants, and literary men. A number of Dutch jurisconsults drew up a 'mémoire à consulter,' bearing on this question, and made a suggestion for a conference of jurisconsults from various countries. This became the signal for Mr. Westlake to place himself at the head of a movement for

this conference. The meeting, as it is stated in its Report, 'was prepared for by the preliminary communication of documents collected under the direction of Professor Westlake,' and he extended to it the hospitality of his own house in London. The conference took place February 26 to March 1, 1910, and resulted in a long Report, the drafting of which was intrusted to one of its members, Professor A. de Lapradelle of Paris, and which was summarised in seven briefly worded conclusions, published immediately after the meeting in a vast number of newspapers in Great Britain and abroad. This Report is a veritable monument of binding juridical reasoning; and Mr. Westlake's share in this work, especially the conduct of all the preparatory negotiations, bears ample testimony to his fervour in a just cause and his marvellous mental vigour at the age of eighty-two years.

Both before and after this conference Mr. Westlake had continued to attract the attention of the public in letters to *The Times*, to various points of legal bearing in the Russo-Finnish controversy. It was a source of profound grief for him that matters in Finland went from bad to worse. The law on 'Imperial legislation' for Finland was adopted by the Russian Duma and State Council—though by no means unanimously—and sanctioned by the Tsar on June 30, 1910; in the beginning of 1912 another law was similarly issued by the Russian legislature, by which the principle of a separate

Finnish citizenship was denied, and, *inter alia*, paving the way for the introduction into Finland of Russian officials and Russian bureaucratic methods. It was not long before Finnish officials found themselves confronted with the choice between compounding with their conscience by submitting quietly to these new laws, which the Finnish Diet had repeatedly declared to have no legal validity in Finland, or incurring the heavy penalties subsequent on a refusal to comply with them. The most noteworthy case of such conflicts was that in which the Court of Appeal of Viborg was involved, which brought upon the members of that Court, in all twenty-three in number, a sentence pronounced by the St. Petersburg District Court of sixteen months' imprisonment, dismissal from their judgeships, and ten years' disqualification for any public post, salaried or honorary.

On hearing of this, Mr. Westlake writes, in a letter dated February 6 — two days after his eighty-fifth birthday and a few weeks before his death :

'I have been grieved beyond expression at the severe, I might call them savage, punishments awarded to the Viborg judges. . . . The prospect that it should proceed without a settlement until the last shreds of the old constitution of Finland are swept away is extremely sad.'

As a proof of how much Mr. Westlake's mind in those days was occupied with the sad fate of

Finland, I may give an extract from another letter written on the following day :

'Could not the Constitutional Democrats bring forward a motion in the Duma to the effect that any attempt to enumerate and to establish a method of legislating for the points of common interest must fail in practice, if it is not the outcome of full and free consultation between a sufficient number of representatives of the Russian and Finnish peoples, as is shown by the failure, now evident, of the recent attempt to enumerate the points and to establish such a method without full and free consultation; and that therefore the Duma should request the Tsar Grand Duke to take the necessary steps for assembling a sufficient conference of Russian and Finnish representatives to consider the enumeration of the points of common interest, and the establishment of a method of legislating for them ? And if such a motion were made, could it not be supported by a corresponding motion in the Finnish Diet, or at least by a petition or memorial signed by a number of influential and representative Finlanders ? The motion would fail in the Duma, at least the first time it was made, but in that way the present *impasse* might be brightened by the introduction of a spirit of conciliation into it, and in the end a result might be arrived at which would save many valuable parts of the constitution of Finland.'

I may be allowed to quote an extract of yet another letter which clearly shows how keenly he

was interested in everything that might in any way promote the Finnish cause. It was written on November 25, 1911.

'Thinking over your affairs it has lately occurred to me that nothing would help more to enlist public opinion on the side of Finland than a good *history* of the country, in French; short enough and free enough from legal technicalities to be read by the public. The narrative form always appeals more to the public than the severely argumentative, and on the Finnish question argument has been so much used as to have become rather wearisome to most. . . . The history might begin with the war in Finland, which would give it a bright and interesting opening. It should trace, shortly and brightly, the progress made by Finland since 1809, economically, educationally, and socially, tracing it so far as possible to its source in the freedom of the country. . . . The book might be written in English and translated into French for Continental and especially Russian use.'

In a postscript he adds: 'Technicalities not to be avoided, but made intelligible.'

Mr. Westlake's activity in favour of the Finnish cause—of which the present sketch gives an only too imperfect picture—was by no means unknown to the Finnish people. His numerous letters in *The Times* were frequently reproduced or at least mentioned in Finland papers. In 1907 a well-known Finnish monthly review, the *Valvoja*, pub-

lished a series of articles on 'Friends of Finland Abroad,' with short contributions by them. From Mr. Westlake's contribution I quote below the following characteristic extract:

'The great upheaval of 1848 took place in the days of my studentship at the University of Cambridge, and I followed it with the feelings natural to an English Liberal. Two impressions of that time have remained with me ever since. One is the love of liberty. I felt a warm sympathy for those who, like the Italians, were prevented by a despotic government from uttering their own thoughts and living their own lives. The other was the value of ancient laws and an ancient constitution as the form and safeguard of liberty with order. For those who through unhappy circumstances could clothe their legitimate aspirations in no historic framework, new institutions were the only salvation. Liberty before all. But my heart went out to the Hungarians who sought in 1848 to build their liberty on an historic base, and I felt the destruction of the ancient constitution of Hungary to be a crime for which I could not forgive the Austrians until they restored it in 1867.

'With these prepossessions it may easily be seen how the cause of Finland appealed to me. Old laws and an historic constitution were suppressed by outside force, in order that a free and enlightened people might be absorbed into a different and despotically governed mass; and if, together with

that mass, it should afterwards recover liberty, it would be liberty cast in a new mould, and not the rational development of the past of Finland. Happily, Finland has been restored to herself. Free to determine her own course, she has reformed her legislature with the aid of modern political science. She has adopted the principle of proportional representation, to which thinkers are everywhere turning their eyes as the true remedy for parliaments undermined by party spirit, and in the election held under that principle she has given to the world a valuable example of the ease with which it can be worked.'

This was written, it should be remembered, in 1907, before the policy of oppression had made its reappearance.

As a token of appreciation, not only of Professor Westlake's position as one of the leading European jurisconsults, but also of the interest he had taken in the affairs of Finland, the Finnish Society of Sciences in November 1910 elected Professor Westlake honorary member.

I may further mention that when Mr. Westlake in 1908 completed his eightieth year a number of representative Finlanders sent to him a telegram of congratulation and of appreciation of his work. Professor Westlake replied in a telegram as follows :

' Deeply touched by congratulations from Finland. Kindly let all know I reciprocate warm personal feeling arising from union in a sacred cause. God save Finland!'

His telegram was followed by a letter to one of the signatories. A brief quotation from it may form a fitting conclusion to this sketch, as it betrays that warmth of heart which in combination with an unusually keen intelligence constituted Mr. Westlake's harmonious personality.

'Public causes,' Mr. Westlake writes, 'are sweetened and humanised when personal warmth of feeling arises among workers in common. And so it should be, for it is to their effect on the well-being of individuals that the value of public causes is due.'

J. N. Reuter.

X

THE WORKING MEN'S COLLEGE

PROFESSOR WESTLAKE, before he died, had survived all but one of the founders of the Working Men's College, the last surviving founder being the Rev. J. Llewelyn Davies. On November 2, 1912, Founders' Day was for the first time celebrated at the College, and, to the great pleasure of all who were present, Westlake was on the platform, and one of the speakers—his reception testifying to the honour and affection in which he was held and which now attach to his memory.

The Working Men's College was founded in the year 1854. In January of that year, in the circle of men who had gathered round Frederick Denison Maurice and had been inspired by him in the cause of bettering the condition of the working classes, a resolution was carried on the motion of Tom Hughes: 'That it be referred to the Committee on Teaching and Publication to name, and, so far as they think fit, to carry out a plan for the establishment of a People's College in connection

with the Metropolitan Associations.' The Committee consisted of fourteen members, of whom John Westlake was one, and in the autumn of the year the College came into being.

In 1904 the College celebrated its jubilee, and a book was issued, edited by Mr. Llewelyn Davies, and published by Messrs. Macmillan—Alexander Macmillan having been a staunch and kind friend of the College—entitled 'The Working Men's College, 1854–1904.' Various representative men contributed to the book, illustrating the main features of the fifty years of the College history, and one of the contributions was a personal note by Westlake. In it he described as follows his first connection with Maurice and his work: 'I may present one novel feature in claiming to have been a learner from the College more than a teacher in it. I came up to London from Cambridge in 1852, with an introduction to Maurice from my friend and tutor, Colenso, afterwards the heroic Bishop of Natal, who was then much under Maurice's influence in religion, and with the belief, acquired from J. S. Mill's "Political Economy," that the problems connected with labour could only be solved by forms of co-operation giving the workman an interest in profit. Having these two points of contact with the Christian Socialist movement, to which Ludlow has justly traced the origin of the Working Men's College, I became associated in the steps which were taken for establishing it. In the course of

those steps the contemplation of the social side of national life, that is of human fellowship as the base and complement of common political citizenship, and the idea of a college as suited to realise it, came new to me from Maurice's teaching; to no one could they have had more of the character of a revelation, and to no one could their realisation in the College have been more of a lesson.' Not a few men, including the present writer, who have come to the Working Men's College as teachers, have learnt rather than taught, and have received more than they have given, but assuredly, if Westlake owed a debt to the College which he helped to found, he repaid it with interest.

In the early days, from 1854 to 1859, he took classes, teaching mathematical subjects—arithmetic, algebra, trigonometry. 'Arithmetic and Algebra,' writes Mr. Litchfield of the beginnings of the College, 'was shared by Mr. Westlake and myself.' That he was a competent teacher is illustrated by the fact that an old student, who, when he died, left a large sum to the College, left also legacies to Westlake and his friend and colleague Litchfield, 'as a small token of appreciation of the trouble they bestowed upon me during my connection with the College, and the kindly feeling they extended to me, which has always been a pleasant memory.' Westlake was one of many eminent men who, in the days of their youth, were not content merely to give occasional lectures at the College, but taught a

handful of students week after week as carefully and scrupulously as if they had been paid handsome salaries. It has been one of the great glories of the College, and one of its main sources of strength, that the regular class has always predominated over the occasional lecture, that volunteers have never been wanting for class-teaching, and that great names have been associated with the routine work of ordinary commonplace subjects.

But men who have professions to follow, and who make a mark in their professions, who feel year by year growing calls of labour and of distinction in public and professional life, after a while are physically unable to earmark stated evenings every week for teaching the subjects which came to their hand on first leaving the University; and Westlake dropped out of the teaching list. Yet, full and busy as his life was, he never lost continuous touch with the College. He gave addresses and made speeches; he was always a member of the governing body and a trustee: there was no founder who was more constant in attendance at the annual suppers or on state occasions: there was none who responded more readily and promptly to any appeal for help or advice.

When Maurice, the first Principal, died in 1872, the Working Men's College passed through a critical stage. The governing body was the Council, and the Council had in 1857, for the purposes of legal ownership of property, been registered as a company

under the Joint Stock Companies Act. The arrangement was a vicious one, for, in the words of the present bursar, 'the Company and the Council being one, the Council was trustee for itself.' As years went on, the need grew for reconstituting the Council and for establishing a body of trustees separate from and independent of the Council. Maurice's death precipitated a crisis, but, after about two years, the cause of reform triumphed. Westlake then gave the College the benefit of his legal skill and learning, and drafted the articles of Association of 'The Working Men's College Corporation,' as it exists to-day. The list of the first members included his own name, and the chairman was his great friend, Tom Hughes, who had succeeded Maurice as Principal. The new board of trustees came into existence in November 1874, and the College was now on a sound footing, so far as its management and its legal position was concerned. But it was in great financial difficulties. Its freehold property, two houses in Great Ormond Street, had been mortgaged, and money had been raised by debentures to pay for new class-rooms built in the garden behind the houses. Westlake was one of the debenture-holders, and in 1878, he made the College a present of his debentures, which amounted to a gift of £250 towards the reduction of the debt. This was in accordance with his lifelong attitude to the College. He was not able to give much time to it: he had to leave to others the day-to-day

charge of its interests: but on the other hand he was the very reverse of a fair-weather friend or an occasional well-wisher. He believed with his whole heart in the principles upon which it had been founded and which it embodied; and when there was a time of trouble and its existence was in danger, he was ready and anxious to stand by it, to give it all the help he could with his wisdom and with his money.

I have spoken of his friendship for Tom Hughes. The last time, if I remember right, that I saw him was on November 29, 1912, when we both went down to Uffington to be present at the unveiling in Uffington Church of a memorial tablet to Tom Hughes presented by Mr. Walter Morrison. There were three speakers in the church, and of them Westlake spoke for the Working Men's College. It was no light thing for a very old man to travel down in winter to pay a tribute to his friend's memory; and his words, the words, as always, of a thinking man to thinking men, were full alike of deep feeling and of strong confidence in the principles which both Tom Hughes and himself had preached and practised. It was very shortly afterwards, on December 11, that he read a paper at the College, on 'The Study of History' before the Westlake Historical Society, which bears his name. This was his last visit to the College, for, for the first time for many years, he was not present at the annual supper, shortly before Christmas, and when the

following April came we lost, in the words of the editor of the *Working Men's College Journal*, 'so learned and wise a man and so kindly a friend.'

Most of those who worked actively under or side by side with Professor Westlake at the Working Men's College have passed away, but the following is the estimate of him formed by a good judge, whose memory goes back for many years, Mr. J. A. Forster, bursar of the College: 'Excepting perhaps quite in the early days, I do not think he ever taught a regular class, but as a lecturer he was greatly esteemed. His rapid yet very distinct utterance, his conciseness and accuracy, with never a superfluous word, held the attention of his audience in a remarkable manner. In the early times, his advice was of great value to the College, and he was always turned to in times of difficulty or doubt. His judicious mind inspired the greatest confidence. From the commencement he kept closely in touch with the College and its work, helping where he could with advice and direction. No one of the founders inspired greater respect.'

Belonging myself to a much later generation, I cannot claim to have been intimate with Professor Westlake, but for many years, from time to time, I listened to him, spoke with him, had opportunities of forming my own judgment as to what manner of man he was. I never remember him saying a word which could give offence, or which would not command assent from right-minded men. I

never remember any speech of his which did not contain something worth saying and worth hearing. He seemed to me to be a man of clear and strong views, who nevertheless was prudent in counsel, sane in judgment, incapable of being swayed by small or personal motives, having a high, broad, and eminently just view of men and things. The debt of the Working Men's College to him may be summed up by saying that he gave to it association with a man who in his own particular branch of learning was of world-wide repute, and with a character in which all who knew him had implicit confidence; that he was conspicuously at pains from young manhood to old age always to maintain his connection with the College and ever to promote its interests; and that he has added to the roll of our honoured dead the name of one who with eminence in learning combined lifelong strong and practical adherence to the doctrine of the fellowship of men.

C. P. Lucas,

Principal of the Working Men's College.

XI

TREGERTHEN

I

To how many friends of Mr. Westlake will the name of Tregerthen recall familiar scenes and happy days in the past, and it will ever remain to them a delightful and inspiring memory.

During the changes and chances of forty years, hither have come one generation after another of friends and kinsfolk, from far and near. Men of distinction in every branch of science and literature, artists and scholars—young people full of life and eager delight in the free, wild country—the lonely and sad-hearted—all alike here have found a hospitable welcome from the kindly host and hostess of that summer paradise on the slope of Zennor Hill.

MARIAN ANDREWS.

II

Nearly forty summers and autumns found Mr. Westlake in his much-loved Cornish home. It was indeed home to him, for he knew every stone from

Alice Westlake

From a photograph by J. Thomson in 1887

St. Ives to the Land's End, and he greeted as a friend the outline of every tor, cliff, and hill from Brown Willy to the Scilly Islands. The love of landscape beauty was a passion with him, and he revelled in the contemplation of earth, sea, and sky as seen from those breezy moorland heights.

He had never had a robust physique, nor cared for riding nor sport of any kind, but he was always an indefatigable walker, and a long walk on the hills or the cliffs was his favourite recreation. In the last winter of his life, when confined by bad weather to his London house, he paced the passage for exercise, patiently counting his steps, for, knowing how many went to a mile, and his wonderful memory exactly recording distances round Tregerthen, it pleased him to imagine himself attaining different favourite points in his walks, and to recall the glories of sea and land each in turn presented.

Great and constant as was the hospitality Mr. Westlake showed in London, he was, perhaps, even more pleased to welcome his many friends, English and foreign, to the life of quiet occupations and simple enjoyment he led in Cornwall. What a number of people had happy weeks at Tregerthen! What wonderful appetites were developed in that wonderful air, and what ambrosia seemed the Cornish dainties!

The key-notes of the place were liberty and activity. Unless some far expedition was destined to claim the whole day, Mr. Westlake always gave

the hours between breakfast and luncheon to literary labour of value to the world which is beyond the scope of this paper, and will be told by worthier pens.

At luncheon, when he joined the large party often assembled, he took a genial interest in every one's choice of pursuit. Of course, he was deeply interested in the work in the studio and the out-door sketching; for was not the Mistress of the studio always the centre of his thoughts? But he liked also to hear of the bathing and exploring parties, of the campaigns preparing of tennis or hockey, or schemes for a dance or charade to come off in the evening. Some of the guests were sure to be inclined for a walk, under Mr. Westlake's guidance, to one of the tors or to some of the many interesting antiquities in the neighbourhood, and with them he would start upwards on the Moors. One of those companions remembers his turning to look down from the hill on a very vigorous and uproarious party playing hockey in front of the Poor House, and saying: 'There is nothing gives me so much pleasure as to see a number of people each enjoying himself in his own way.' Games were not in his way, except to share in them through sympathy. A visitor, who years ago was at Tregerthen as a young girl, said lately: 'He always seemed so glad to see us frolicking about;' and the warm affection felt for him by his many young relatives perhaps sprang as much from his sympathy in their pleasures

as from gratitude for his constant benevolent interest in their education and careers.

If the walkers up the hill looked towards the west, the village of Zennor and the ancient tower of the church soon came in sight. The Vicar, Mr. Borlase, was an intimate friend of Mr. Westlake, and they had many tastes in common. Mr. Borlase in his long life had been an acute observer of Cornish character and peculiarities, and he was never tired of talking of the villagers of Zennor, and telling stories of their ways and views of life. In his later years, he became very infirm, and a visit to the venerable vicar was a daily pleasure either to Mr. or Mrs. Westlake during their autumn holiday. It must have been a pleasant solace to an invalid in that remote vicarage.

During the early years of their tenure of Tregerthen, it became obvious that the body of Zennor Church must be either largely repaired or rebuilt, or, if this were not done, that the 'little grey church by the windy shore' might cease to exist. The roof was in sad condition, and such was the damp decay of the flooring that there was danger of the congregation prematurely descending into the depths below. In this work of repair, Mr. and Mrs. Westlake took the deepest interest. That they largely provided the means everyone who knows them would feel certain; but they also gave the most careful thought and study to every portion of the work, allowing nothing to be done that could

in any way interfere with the characteristic simplicity and beauty of the building. Almost daily they visited the Church, and, in consultation with the architect, watched over every detail as the labour proceeded. Their guests were all honoured by introduction to the Mermaid with tail and looking-glass found carved on one oak bench-end, and recalling the legendary beliefs of that rocky shore. Alas! she is almost the only remaining relic alike of the old bench-ends and of the legends. The result of the discriminating care bestowed is a restoration worthy of the name. Would that every ancient church had a fate as happy as that of Zennor!

The villagers were the objects of never-flagging interest. That they should be helped in sickness or need goes without saying; but Tregerthen brought also a yearly store of amusement, generally at the time of the Harvest Festival, when the school became the scene of a play, a concert, or of tableaux, according as the talent available found best scope. In the preparations and the performances, Mr. Westlake took the greatest interest and encouraged the actors with his cordial approbation.

He did not care much for animals, or rather it was not his way to make pets and companions of horses and dogs; but his wide sense of justice and intense kindness led to an incident which the writer cannot forget, although it is not connected with life at Tregerthen. When he decided to give

up a carriage in London a merciful fate for his horses, no longer young, was his first care. It was better they should be shot than run the risk of ever falling into the hands of an unkind master, and his anxiety for them made him go himself to see their death made as swift and painless as possible. Probably to no man in the kingdom could the sight be more repulsive. Not in the slightest degree a sportsman, he perhaps had never even seen an animal killed. But no thought of avoiding pain to himself would occur to Mr. Westlake if by any exertion he could benefit a living creature.

A recollection of Mr. Westlake cannot fail to recall his attitude to those, whether learned or ignorant, who came to him with a wish to gather fruit from his wide knowledge. An English judge writes of his delightful kindliness and patience when International Law was the topic of their conversation, and says: 'He treated one as a comrade, whereas one's highest claim would have been to be a pupil,' and a Professor, himself of world-wide legal renown, expresses an exactly similar feeling of wonder and gratitude. But the same welcome was shown to the youngest and most ignorant whatever was the subject. Mr. Westlake's own constant pursuit of truth and knowledge seemed to make him glad to hail the humblest as a fellow-disciple. He would pour out his own stores and take any trouble to explain a matter on which a question was asked, and very likely for a young

inquirer would later search out a book or map to supply further information.

Someone asked him years ago what would be the most valuable gift a fairy godmother could bestow on a child, and he answered without hesitation, 'a light heart.' Perhaps the good fairy had presided at his own christening, for his was a singularly happy disposition. He had the greatest enjoyment of life, and more than one of his friends remembers his saying that he would like to live his whole life over again. One may venture to think so cheerful an outlook had been earned by a career devoted with rare singleness of purpose to the service of others, for few men have used great talents for such wholly unselfish ends. He took the keenest interest in every aspect of the world past, present, and future. No sighing after 'the good old times,' so common a feeling as age advances, was heard from Mr. Westlake, for he cherished a hearty belief that the general tendency is towards improvement.

Sir Walter Scott, when he lost his beloved friend and chieftain, the Buccleuch, and transferred his loyalty to his successor, summed up his wishes for this young man's career in the Scotch saying: 'May he be

'A hedge about his friends,
A heckle to his foes.'

No man was ever a more faithful hedge to his friends than Mr. Westlake. When once he took a part, his

pluck and perseverance were undaunted. Those at whose side he fought, and won with them a cause of great public importance, look back now and think that without that staunch ally the battle might have gone against them. His perfect sincerity and clear judgment, and his tolerance of adverse opinions, were felt by all to be their best standard and guide in dealing with difficult questions; his wise advice was never refused to his friends, his help and sympathy were always at their service. Too magnanimous to look on any man as a personal foe, he set his face with fearless integrity against evil in any form; he held aloft throughout his life the banner of honour and purity, and was ever ready, by word and by pen, to 'heckle' injustice and tyranny not only in Britain but throughout the wide world.

GERTRUDE PHILLPOTTS.

APPENDIX

A LIST[1] OF THE WRITINGS OF JOHN WESTLAKE

'Treatise on Private International Law, or the Conflict of Laws, with principal reference to its practice in the English and other cognate systems of Jurisprudence.'

First edition. London: W. Maxwell, 1858.

Second edition (with modified title) and largely rewritten: Treatise on Private International Law, with principal reference to its practice in England. London: Maxwell & Son, 1880. (Translated into German by Von Holtzendorff. Berlin, 1884.)

Third edition. London: Sweet and Maxwell, 1890.

Fourth edition. London: Sweet and Maxwell, 1905.

Fifth edition. London: Sweet and Maxwell, 1912. Translated into French by Paul Goulé—Traité de Droit International privé—with a preface by de Lapradelle.

'International Law.'

Vol. I. 'Peace.' Cambridge University Press, 1904. (Second edition, 1910.)

Vol. II. 'War.' Cambridge University Press, 1907. (Second edition, 1913.) A French translation, by de Lapradelle, of both volumes is in preparation.

'Ayala. De Jure et Officiis Bellicis et Disciplinâ Militari.' Two volumes edited for Carnegie Institution of Washington with prefatory notice of Ayala, 1913. (In the 'Classics of International Law' under the general editorship of James Brown Scott.)

'Chapters on the Principles of International Law.' Cambridge University Press, 1894. Translated into French—Études sur les principes de droit international (translated by Nys), Brussels and Paris, 1895—and Japanese.

[1] An effort has been made to make this list complete, but probably many contributions of Westlake's earlier life to periodical literature have escaped the compilers.

'International Law (Private)' in the supplement to the fifth edition of the 'Encyclopædia Britannica.'

'The Church in the Colonies.' Contribution to 'Essays on Church Policy,' edited by the Rev. W. L. Clay, 1868.

'International Law.' An Introductory Lecture. London: Clay & Sons, 1888. (French translation by Ed. Rolin in the 'Revue de Droit International et de Législation Comparée,' vol. xxi. (1889), pp. 19–36.)

SHORTER PAPERS.

(A) Read before the Social Science Association.

Is it desirable to prohibit the export of contraband of war?' September 23, 1870. (French translation in the 'Revue de Droit International et de Législation Comparée,' vol. ii. (1870), pp. 614–635.)

'Domicile or Political Nationality?' Transactions of the Social Science Association, and Spottiswoode & Co., 1880.

'Copyright Bill, 1881.' Sessional Proceedings of the Social Science Association, May 12, 1881, pp. 69–83.

'Copyright (Works of Fine Art, etc.) Bill.' Sessional Proceedings of the Social Science Association, May 1882, pp. 193–202.

'Addresses as President of Jurisprudence Department at Birmingham in 1884.' Transactions of the Social Science Association.

(B) Read before the Juridical Society.

'Relations between Public and Private International Law. Transactions of the Juridical Society 1855–8, pp. 173–182.

'Commercial Blockade.' Transactions of the Juridical Society 1858–63, pp. 681–721.

'Legal Reporting.' Transactions of the Juridical Society 1858–63, pp. 745–757.

(C) Contributed to the *Working Men's College Magazine.*

'Study of Mathematics,' April and August 1859. Reprinted 1879 for London Association of School-mistresses.

'American Constitution and the War.' October 1861.

'On the Study of History,' vol. xiii. no. 233. February 1913.

(D) Papers published in the 'Revue de Droit International et de Législation Comparée.'

I. *Articles.*

'Est-il désirable de prohiber l'exportation de la contrebande de guerre?' Vol. ii. (1870), pp. 614–635.

'Exposé de lois anglaises récentes. Loi sur l'enseignement primaire, et loi pour le maintien de la paix en Irlande.' By J. Westlake and Alice Westlake. Vol. iii. (1871), pp. 55–62.

'La loi anglaise de 1870 sur les biens des femmes mariées (Married Women's Property Act, 1870) 33 & 34 Vict. c. 93.' Vol. iii. (1871), pp. 195–201.

'Exposé de lois anglaises récentes, Naturalisation Act, 1870, Foreign Enlistment Act, 1870, Landlord and Tenant (Ireland) Act, 1870.' Vol. iii. (1871), pp. 601–615.

'Letter concerning the Convention of Geneva. M. Moynier's new project.' Vol. iv. (1872), pp. 334–335.

'Cas de droit international, public ou privé, récemment jugés par les tribunaux anglais.' Vol. vi. (1874), pp. 388–403, 612–629.

'Observations de Monsieur Westlake sur l'article de L. Gessner: "De la Réforme du droit maritime de la guerre."'

'Cas de droit international, public ou privé, récemment jugés par les tribunaux anglais. Vol. viii. (1876), pp. 478–482.

'Cas de droit international, public ou privé, récemment jugés par les tribunaux anglais. Vol. x. (1878), pp. 539–550.

'La Russie et l'Angleterre dans l'Asie centrale. Réponse à M. Martens.' Vol. xi. (1879), pp. 401–410.

'Introduction au droit international privé.' Vol. xii. (1880), pp. 23–46.

'Encore un mot sur la Russie et l'Angleterre dans l'Asie centrale. Note sur la réplique de M. Martens.' Vol. xii. (1880), pp. 295–302.

'La doctrine anglaise en matière de droit international privé.' Vol. xiii. (1881), pp. 435–446.

'La doctrine anglaise en matière de droit international privé.' Vol. xiv. (1882), pp. 285–306.

'Introduction au cours de droit international professé à l'Université de Cambridge.' Translation of Inaugural Lecture, by Ed. Rolin. Vol. xxi. (1889), pp. 19–36.

'Le Conflit anglo-portugais.' Vol. xxiii. (1891), pp. 243–265; vol. xxiv. (1892), pp. 170–205; vol. xxv. (1893), pp. 58–71.

'L'Angleterre et la république Sud-Africaine.' Translated into French by L. Devogel. Vol. xxviii. (1896), pp. 268–300.

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'Notes sur la neutralité permanente.' Second series, vol. iii. (1901), pp. 389–397.

'A la mémoire de Gustave Rolin-Jaequemyns.' Second series, vol. iv. (1902), pp. 120–122.

'Le Blocus pacifique.' Translated from the *Law Quarterly Review* (1909) by Léon Devogel. Second series, vol. xi. (1909), pp. 203–216.

'La fortification de l'Escaut occidental.' Second series, vol. xiii. (1911), pp. 105–112.

II. *Reviews.*

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'The Law of Naturalisation, as amended by the Naturalisation Acts, 1870, by John Cutler.' Vol. iii. (1871), p. 685.

'The Rights and Duties of Neutrals,' by W. E. Hall. Vol. vi. (1874), pp. 703–4.

'Internationalism' by Don Arturo de Marcoartu and 'Prize Essays on International Law' by A. P. Sprague and Paul Lacombe. Vol. ix. (1877), pp. 145–147.

'A Lecture on the Treaty Relations of Russia and Turkey from 1774 to 1853,' by T. E. Holland. Vol. ix. (1877), p. 159.

'Nouveau traité de droit international privé, au double point de vue de la théorie et de la pratique,' by Charles Brocher. Vol. ix. (1877), pp. 606–616.

'Éléments de droit civil anglais' by Ernest Lehr. Vol. xvii. (1885), pp. 95-96.

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'Le droit de la guerre,' by Emile Acollas. Vol. xx. (1888), pp. 94–95.

(E) PAPERS PUBLISHED IN THE *Law Quarterly Review*, VOLS. I–XVI.

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'Note on *Sachs* v. *Sachs*.' Vol. iv. (1888), pp. 108–109.
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'Pacific Blockade.' Vol. xxv. (1909), pp. 13–23.
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II. *Reviews.*

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'The Principles of International Law,' by T. J. Lawrence. Vol. xii. (1896), pp. 285–286.
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'On April 8, 1913, in the *Daily Mirror* of this date there is a reply of mine to a prepaid telegram asking my opinion on the coercion of Montenegro. I approved it.' [John Westlake died on April 14, 1913.]

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